

ESTTA Tracking number: **ESTTA58292**

Filing date: **12/19/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91161817
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Attachments	Applicant's Opposition to Opposer's Motion for Summary Judgment.pdf (23 pages) Exhibit 1 page 1-44.pdf (45 pages) Exhibit 1 pages 45-95.pdf (51 pages) Exhibit 1 pages 96 - end.pdf (49 pages) Exhibit 2.pdf (7 pages) Exhibit 3 MOT004675-004727.pdf (54 pages) Exhibit 3 MOT004728-004768.pdf (41 pages) Exhibits 4-8.pdf (18 pages) Exhibit 9 pages 1-50.pdf (51 pages) Exhibit 9 pages 51 - end.pdf (24 pages)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

NEXTEL COMMUNICATIONS, INC.,)	
)	
Opposer,)	
)	Opp. No.: 91/161,817
v.)	App. No.: 78/235,618
)	Mark: Sensory Mark
MOTOROLA, INC.,)	
)	
Applicant.)	
)	

APPLICANT'S OPPOSITION TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT

I. SUMMARY

This nontraditional trademark case presents an issue of first impression for the Board—how does the *Qualitex* nontraditional trademark analysis apply to the question of registrability of a sound mark in *inter partes* proceedings? Nextel's claim that it is entitled to summary judgment on this issue has two fatal flaws. First, its position is at best bristling with "genuine issue[s]" of "material fact." Thus, its motion should be denied under Federal Rule 56(c). Second, it ignores completely and fails even to cite the landmark Supreme Court case of *Qualitex* that is most closely applicable here. *Qualitex* gave new meaning to the Lanham Act definition of "trademark": "Both the language of the Act and the basic underlying principles of trademark law would seem to include color within the universe of things that can qualify as a trademark. The language of the Lanham Act describes that universe in the broadest of terms. It says that trademarks 'includ[e] any word, name, symbol, or device, or any combination thereof.' Section 1127. Since human beings might use as a 'symbol' or 'device' almost anything at all that is capable of carrying meaning, this language, read literally, is not restrictive. The courts and the

Patent and Trademark Office have authorized for use as a mark a particular shape (of a Coca-Cola bottle), a particular sound (of NBC's three chimes) and even a particular scent (of plumeria blossoms on sewing thread)." *Qualitex Co. v. Jacobson Products Co.*, 34 U.S.P.Q.2d 1161, 1162 (1995).

On the record before the Board, Motorola's 911 Hz Sound Mark ("Sound Mark") that emanates from Motorola's two-way radios: (1) is used in commerce in connection with the goods; (2) is inherently distinctive; or (3) in the alternative, has acquired distinctiveness among the relevant consumers. Motorola's Sound Mark is, under the facts and law presented, entitled to registration. Nextel's assertions to the contrary raise triable issues of fact and are unsupported by the case law, particularly Board precedent acknowledging that dual purpose trademarks are registrable. Nextel's motion for summary judgment should therefore be denied.

II. BACKGROUND

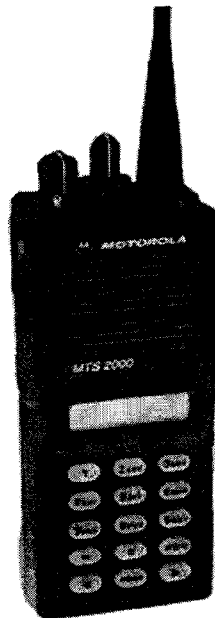
A. Motorola's Sound Mark

Motorola created its 911 Hz Sound Mark in 1983-1984 and selected it for its aesthetic quality. (Testimony of Motorola's 30(b)(6) deposition designee, David Klein ("Klein Dep."), at pp. 51, 53, 57-60. A copy of the Klein Dep. transcript is attached at Exhibit 1.) Motorola first used it commercially as early as May 6, 1991 in connection with its two-way radios (Sensory Mark Application Serial No. 78/235,618) and has used it on two-way radios continuously since then. (Ex. 1, Klein Dep. at pp. 12-13, 68.)

The Sound Mark is heard when a channel is available for a two-way radio user to communicate with another two-way radio user. (Ex. 1, Klein Dep. at pp. 28, 44-45, 102-103.) Typical users of Motorola's two-way radios include personnel in public safety (*e.g.*, fire, police, and emergency medical technicians), critical infrastructure sectors (*e.g.*, utility companies), and

federal government groups (*e.g.*, Dept. of Defense, Dept. of Justice). (Ex. 1, Klein Dep. at pp. 89-90, 123, 129-132.) Such “first responders” rely on Motorola’s two-way radios in emergency situations, and when they hear the Sound Mark they recognize Motorola’s reliability and product quality.

To foster this recognition, Motorola trains end users of its radios to recognize Motorola as the source of the Sound Mark. For example, the Sound Mark is described in Motorola’s user manuals and user guides. It is also heard through an “on-line method” that “actually plays the tone.” It is also heard at trade shows where Motorola displays and promotes its two-way radios. Motorola’s two-way radios that emit the Sound Mark are also prominently marked with the MOTOROLA word mark and design mark (Ex. 1, Klein Dep. at pp. 45-46, 109-110, 117-118) so that users immediately connect the Sound Mark with Motorola as the source of the products when they hear it. A photograph of a Motorola two-way radio that emits the Sound Mark is shown below:



Motorola ensures the consistency of its Sound Mark among its two-way radios by, for example, having requirements for the particular pitch and cadence and conducting verification testing of products. (Ex. 1, Klein Dep. at pp. 13-14, 28.)

Motorola's recent annual advertising and promotional budget for its two-way radios that emit the Sound Mark includes \$100,000 for user groups in the public safety and critical infrastructure sector; \$160,000 for materials and presentations for federal government groups; and \$600,000 for trade shows for fire and police chiefs and related public safety organizations. (Ex. 1, Klein Dep. at pp. 129-132.) The Sound Mark has been in use for more than fourteen years, and the products with which it is associated have been significantly promoted. Nextel offers no contrary evidence.

B. Motorola's Trademark Application

Motorola applied for its Sound Mark for use in connection with "two-way radios" on April 9, 2003 (Ser. No. 78/235,618). On October 17, 2003, the Examiner required a revised description of the Sound Mark and a substitute specimen, along with a declaration that the substitute specimen was in use in commerce at least as early as April 9, 2003. No other issues were raised. Motorola addressed the informalities on October 20, 2003, the Sound Mark was approved for publication on February 4, 2004, and was published in the *Official Gazette* on February 24, 2004.

C. Nextel's Opposition

Nextel filed its Notice of Opposition on August 23, 2004. The Notice alleges only two grounds for opposition: non-use and lack of distinctiveness. More specifically, Nextel alleges that:

Upon information and belief, Applicant has not used the 911 Hz tone in commerce in connection with the goods listed in the 911 Hz Tone Application, in

derogation of Sections 1 and 45 of the Lanham Act (Ex. 2, Notice of Opposition at Para. 9); and

Upon information and belief, the 911 Hz tone is not inherently distinctive and has not acquired distinctiveness as to the goods listed in the 911 Hz Tone Application, in derogation of Sections 1, 2, and 45 of the Lanham Act (Ex. 2, Notice of Opposition at Para. 10).

(A copy of Nextel's Notice of Opposition is attached at Exhibit 2.)

III. ARGUMENT

Motorola's Sound Mark is unique, different, and distinctive. It is not a commonplace sound, nor is it a sound to which listeners have been exposed under different circumstances. It is a unique sound coined by Motorola for use in connection with its two-way radio products. (Ex. 1, Klein Dep. at pp. 57-60.) Nextel has made no evidence of record that would establish that the Sound Mark is an ordinary, non-distinctive tone when used in connection with two-way radios.

A. Motorola's Sound Mark is a Dual Purpose Trademark

Motorola agrees that a purpose of the Sound Mark is to alert users to the operation of the radios, but maintains that significant source identification occurs simultaneously. To ignore it—and it is well-established in the record—is to ignore the trademark character of the Sound Mark and the “meaning” it carries under *Qualitex*. See *Qualitex*, 34 U.S.P.Q.2d 1161. There is no reason why a mark cannot serve the dual purpose of (1) alerting users of an event, namely, that a communications channel is available, and (2) the trademark function of indicating the source of the goods. That the Sound Mark serves a purpose does not deprive the Sound Mark from simultaneously serving as a trademark.

The Board has recognized the concept of dual purpose trademarks in other contexts. See, e.g., *In re Paramount Pictures Corp.*, 217 U.S.P.Q. 292, 294 (T.T.A.B. 1983). As the Board stated in *Paramount*, “Obviously, the Lanham Act does not exclude registration of a mark simply

because it has an ornamental as well as a source indicating purpose.” *Id.* at 293. In reversing the Examiner’s refusal of a mark used for the dual purpose of ornamentation as well as a source indicator, the Board went on to explain:

Thus, in each situation involving a different type of affixation, the key question is . . . “Does the subject matter perform a trademark function when used in this manner?” Stated another way, “Would a purchaser recognize this mark as indicating the source of these goods?”

Id.

To that end, Motorola’s uncontroverted evidence establishes that consumers do, in fact, recognize Motorola’s Sound Mark as identifying a “single, albeit anonymous, source” of the two-way radios—if not Motorola itself. *See Paramount*, 217 U.S.P.Q. at 294 (citing *Johnson & Johnson v. E. I. du Pont de Nemours & Co.*, 181 U.S.P.Q. 790 (T.T.A.B. 1974)). Motorola’s source-identifying evidence includes a consumer survey conducted by RL Associates finding that 42% of the respondents in the relevant universe recognized Motorola’s Sound Mark as coming from a single source. (Exhibit 3, Expert Report of Michael Rappeport (“Rappeport Report”) at MOT 004686.)

The fundamental flaw with Nextel’s arguments is that they overlook the Patent and Trademark Office’s acknowledgment that “dual use” trademarks are registerable. *See, e.g., In re Paramount*, 217 U.S.P.Q. at 293; *In re Watkins Glen Int’l, Inc.*, 227 U.S.P.Q. 727, 729 (T.T.A.B. 1985) (“...ornamental matter which may additionally perform a source-indicating function is registrable if it is found to be a trademark of applicant”); *In re Paramount Pictures Corp.*, 213 U.S.P.Q. 1111, 1113 (T.T.A.B. 1982) (holding that a mark may be both ornamental and source-indicating). In fact, the Board in *In re Paramount* stated as follows with respect to sound marks:

We start from the point that our trademark law is very liberal -- perhaps the most liberal in the world -- as to what is registrable subject matter. The outermost reach of this principle, perhaps, is in the interpretation we apply to applications for

registration of “sound” marks. In many, if not most, other countries, such matter is not deemed registrable because, not being in any tangible form, sound would not be perceived by purchasers to constitute a mark, a rationale which is similar to that which has been applied here. However, the answer of our law is that this is an objection of form, without substance, where the sound is rendered in such a way as to impart, or also impart, source significance. To be sure, not all sounds distinguish source and most do not. In the case of musical sound, for example, the entertainment aspect generally overwhelms any other. However, this is not always the case and where a particular musical sound has, or also has, source indicating significance, we have recognized this trademark function by issuing a registration of the sound as a mark.

In re Paramount, 213 U.S.P.Q. at 1113. Thus, a mark may serve more than one purpose so long as one of its purposes is a trademark purpose.

Although Nextel cites Motorola’s witness testimony regarding the event that is signaled by the audible tone (namely, that the audio channel is available), Nextel fails to mention Mr. Klein’s testimony regarding the trademark function of the tone, which entitles the Sound Mark to registration:

A: The 911 Hz Tone signifies the microphone—either the channels available for communication or that the microphone is active and transmitting. So it allows the user to understand that. *In addition, they know that when they hear that tone, that tone is coming from a Motorola product.*

Q: ... How do they know that it’s coming from a Motorola product?

A: There are a variety of ways. Motorola trains end users specifically in that the tone....

(Ex. 1, Klein Dep. at 44-45.) (Emphasis added.) There is also the obvious: users of the product see the MOTOROLA word trademark and design trademark when they handle the two-way radio.

The PTO’s registration of dual purpose sound marks that announce or accompany useful operations or events further demonstrates the incorrectness of Nextel’s position. For example:

“four harmonically related tones” are registered “to produce a unique chime sound that is used as a prompt tone to the telephone user” (Ex. 4, Reg. No. 1,620,415, <http://www.uspto.gov/go/kids/soundex/74022482.mp3>);

“percolation sounds” are registered to “follow voice responses to pre-recorded prompts” (Ex. 5, Reg. No. 2,468,736, <http://www.uspto.gov/go/kids/soundex/75550755.mp3>);

“a ringing cash register” is registered for “notification service that funds have been deposited into recipient's account ... said notification being telephonic or through a world wide computer network” (Ex. 6, Reg. No. 2,685,338, <http://www.uspto.gov/go/kids/soundex/76152167.mp3>);

a musical phrase is registered as a “startup sound” for an online music manager (Ex. 7, Reg. No. 2,798,332, <http://www.uspto.gov/go/kids/soundex/76189600.mp3>); and

“a series of five chirps similar to the chirping sound of a cricket” is registered for software that “notif[ies] consumers of live weather conditions, weather forecasts, weather alerts, and other weather related information by means of a global computer network” (Ex. 8, Reg. No. 2,827,972, <http://www.uspto.gov/go/kids/soundex/78227515.mp3>).

In each of these registrations, even though sounds were used to impart important information of an event, they nevertheless were entitled to registration. Motorola’s Sound Mark is no different.

B. The Sound Mark is Not Functional

Nextel’s repetitious argument that the Sound Mark is unregistrable because it serves a purpose for the two-way radio user poses an issue of first impression for the Board in the sound mark context. However, the existing case law on nontraditional marks and the Lanham Act itself clearly show that the Sound Mark is not functional as the term is applied by the Supreme Court. For example, the sound pattern and pitch that make up the 911 Hz Sound Mark are not “essential to the use or purpose of the article.” *See Qualitex*, 34 U.S.P.Q.2d 1161, 1163-64. They also do not “affect the cost or quality of the article.” *Id.* Moreover, the Sound Mark is not a feature such that its exclusive use would put competitors at a “significant non-reputation related disadvantage.” *Id.* Put simply, there is no utilitarian advantage to having the particular 911 Hz

Sound Mark emanate from the radio. There is an almost limitless number of other sounds available, such as other tones or even a recorded voice. There are no economies to be gained from using the particular Sound Mark on two-way radios. Nextel has submitted no evidence to the contrary. Any tone could be used to alert users that a communications channel is available. Motorola's competitors can and do use other sounds and sound patterns for this purpose. Nextel's own co-pending summary judgment motion acknowledges this fact. (Nextel Summary Judgment Motion at p. 6, Para. 13.) Motorola coined and has cultivated its Sound Mark as a trademark since its inception. (Ex. 1, Klein Dep. at pp. 57-60.) Nextel is silent on these applicable *Qualitex* factors.

Trade dress functionality precedent is instructive. The *Qualitex* decision held that even an aesthetically pleasing trade dress feature is not functional unless it "serves a significant nontrademark function" where its exclusive appropriation by a manufacturer for a certain product will put competitors at a significant disadvantage. *Qualitex Co.*, 34 U.S.P.Q.2d at 1165-66. Determining that all visually appealing product features are functional would give a disincentive for development of appealing designs, allow copying of trade dress merely because the feature at issue was commercially successful, and eviscerate trade dress protection any time a defendant could show that some consumers find the product appealing. See 2 J. GILSON & A. LALONDE, TRADEMARK PROTECTION & PRACTICE § 7.02[7][f][iii][A], at 7-110.5 (2005). It follows that although the aurally pleasing Sound Mark serves the important nontrademark purpose of alerting consumers, who will rely on the Sound Mark often under extreme circumstances, it can—and does—serve a source-identifying purpose and is entitled to registration.

C. The Sound Mark Application Covers Goods

Nextel also argues that the Sound Mark has not been used as a trademark because it has not been used in traditional advertising, such as television or print: “Motorola has never highlighted the 911 Hz Tone in advertising or otherwise used it....” (Brief at p. 16.) However, Motorola has extensively promoted the product from which the Sound Mark emanates, and it is not required to prove that it advertised the Sound Mark separately.

Nextel ignores the fact that Motorola’s application covers two-way radios, which are goods, not services. The law is well-settled that advertising is not trademark use in connection with goods. *See* T.M.E.P. § 904.05. Indeed, if Motorola had submitted advertising as evidence of use in its application for the Sound Mark, that evidence would have been rejected by the Examining Attorney. *See id.* Use of the Sound Mark in connection with those goods—such as an audible tone emanating from the goods themselves—is sufficient *trademark* use. *See* T.M.E.P. § 1202.15.

Nextel’s argument would perhaps be better suited to a *service mark* application. *See In re Pierce Goods Shops, Inc.*, 178 U.S.P.Q. 512, 512 (T.T.A.B. 1973) (contrasting trademark specimens with service mark specimens); *compare* T.M.E.P. § 904.04 (trademark specimens “must show the mark as used on or in connection with the goods in commerce”), *with* T.M.E.P. § 1301.04(b) (service mark specimens “must show an association between the mark and the services for which registration is sought”) and T.M.E.P. § 1301.04 (advertising material is one type of acceptable specimen of service mark use). But proper trademark use does not require the extra or “separate” use—apart from the radios themselves—that Nextel seeks to require of Motorola here. (Nextel Brief at Para. 18, pp. 7-8 and p. 10.) Nextel’s arguments simply do not apply to the trademark application before the Board.

IV. MOTOROLA'S SOUND MARK IS A REGISTRABLE TRADEMARK

The seminal case regarding nontraditional marks is *Qualitex*, 34 U.S.P.Q.2d 1161, in which the Supreme Court rejected a blanket prohibition against registration of a color as a trademark. *See id.* at 1167. In doing so, the Court noted that there is no “special legal rule” against trademark registration for a color. *See id.* The Court’s reasoning was based, in part, upon Lanham Act legislative history indicating that the words “symbol or device” in the statute do not preclude “the registration of colors, shapes, sounds or configurations where they function as trademarks.” *See id.* at 1166-67 (citations omitted). Throughout its brief, Nextel asserts that sound marks are uniquely subject to special scrutiny. They are not. *See id.*

Motorola’s Sound Mark meets each of the two standards for sound mark distinctiveness set forth in *In re General Electric Broadcasting Co., Inc.*, 199 U.S.P.Q. 560, 563 (T.T.A.B. 1978):

[A] distinction must be made between [1] unique, different, or distinctive sounds and [2] those that resemble or imitate “commonplace” sounds or those to which listeners have been exposed under different circumstances. This does not mean that sounds that fall within the latter group, when applied outside of the common environment, cannot function as marks for the services in connection with which they are used. But, whereas the arbitrary, unique or distinctive marks are registrable as such on the Principal Register without supportive evidence, those that fall within the second category must be supported by evidence to show that purchasers, prospective purchasers and listeners do recognize and associate the sound with services offered and/or rendered exclusively with a single, albeit anonymous, source. *Id.* at 563 (bracketed numbers added).

Nextel’s argument that sound marks are somehow subject to “special requirements” requiring “persuasive evidence” of distinctiveness – language that is found nowhere in any of the cases cited by Nextel (Brief at 17) or the Lanham Act or *Qualitex* – is simply incorrect. For example, both *Kellogg Co. v. Nat’l Biscuit Co.*, 39 U.S.P.Q. 296, 299 (1938) and *Inwood Lab., Inc. v. Ives Lab., Inc.*, 214 U.S.P.Q. 1, 4 (1982) are inapplicable because they merely address issues relating

to trademark protection for terms associated with patented products after expiration of the patents. *General Electric* sets the standards.

A. Motorola's Sound Mark is Arbitrary, Unique, Different, and Distinctive

Simply by listening to Motorola's Sound Mark, one can tell that it is unique, different, and distinctive. It is a unique sound coined by Motorola for use in connection with its two-way radio products. (Ex. 1, Klein Dep. at pp. 57-60.) The Examiner acknowledged the inherently distinctive nature of the Sound by approving the Sound Mark for publication without requiring a showing of acquired distinctiveness under Section 2(f).

More telling, Nextel offers no evidence whatsoever as to where, how, when, or by whom the Sound – or anything similar to the Sound Mark – has ever been used in connection with two-way radios or any other products. Despite its enormous resources, Nextel has been unable to produce any evidence of a single sound that might demonstrate that Motorola's Sound Mark is not unique or different.

Nextel's examples of the honk of a car horn, the beep of an answering machine, and the ring of a doorbell are red herrings. They are as germane as the woof of a dog, the meow of a cat and the hoot of an owl. They have nothing whatsoever to do with the unique tone of Motorola's Sound Mark, which has a particular tone, cadence, and texture developed by Motorola. It is unique, and is not familiar to the general public or to the relevant emergency services public except as a source indicator. (Ex. 1, Klein Dep. at pp. 57-60.)

B. In the Alternative, Motorola's Sound Mark Has Acquired Distinctiveness

Even if Nextel were able to show that Motorola's Sound Mark is commonplace or is a sound that listeners have been exposed to under different circumstances, there is uncontradicted evidence showing that the relevant public recognizes and associate the Sound Mark with a

single, albeit anonymous, source. Motorola's evidence of acquired distinctiveness is in the well-established form of consumer surveys, length of use, and extensive sales and advertising. *See, e.g., In re Owens-Corning Fiberglas Corp.*, 227 U.S.P.Q.2d 417, 422-24 (Fed. Cir. 1985); *In re Instant Transactions Corp. of Am.*, 201 U.S.P.Q. 957, 958 (T.T.A.B. 1979); T.M.E.P. § 1212.06(a)-(d). At the very least, Motorola's secondary meaning evidence raises a question of fact on this issue, thereby precluding entry of summary judgment in Nextel's favor.¹ *See G.H. Mumm & Cie v. Desnoes & Geddes, Ltd.*, 16 U.S.P.Q.2d 1635, 1637 (Fed. Cir. 1990) (secondary meaning poses a question of fact).

1. Motorola Has Used Its Sound As A Mark For Many Years In Its Marketing, Promotion, And Training

Motorola's acquired distinctiveness evidence includes continuous use of the Sound Mark since as early as 1991 (Ex. 1, Klein Dep. at 12-13, 68.); an annual advertising and promotional budget for its two-way radios that emit the Sound Mark of \$100,000 for user groups in the public safety and critical infrastructure sector, \$160,000 for materials and presentations for federal government groups, and \$600,000 for trade shows for fire and police chiefs and related public safety organizations (Ex. 1, Klein Dep. at pp. 129-132.). This is in addition to Motorola's end-user training, which educates the users that the Sound Mark comes from a Motorola radio. It is also heard at trade shows where Motorola displays and promotes its two-way radios. In addition, Motorola's two-way radios that emit the Sound are prominently marked with the MOTOROLA word mark and design marks. (Ex. 1, Klein Dep. at pp. 45-46, 109-110, 117-118.)

These facts, unchallenged by Nextel, establish strong evidence that Motorola's Sound Mark has acquired distinctiveness. At a minimum, Motorola is entitled to prove it at trial. *See,*

¹ However, due to Nextel's lack of supporting evidence in the record, Motorola is entitled to summary judgment as explained in Motorola's co-pending motion.

e.g., In re Owens-Corning Fiberglas Corp., 227 U.S.P.Q.2d at 422-24; *In re Instant Transactions Corp. of Am.*, 201 U.S.P.Q. at 958; T.M.E.P. § 1212.06(a)-(d). However, Motorola has gone one step farther here, and since it has persuasive survey evidence, it need not rely solely on circumstantial evidence. “An expert survey of purchasers can provide the most persuasive evidence of secondary meaning.” *Vision Sports, Inc. v. Melville Corp.*, 12 U.S.P.Q.2d 1740, 1744 (9th Cir. 1989).

2. Motorola’s Survey Evidence, Showing 42% Secondary Meaning, Is Uncontradicted

a. The Sound Mark Survey Results

In September 2005, Motorola commissioned RL Associates to design and carry out a fair and unbiased test of the extent to which (if any) Motorola’s Sound Mark is associated with a single source. (Ex. 3, Rappeport Report at MOT 004677.) In-person interviews were conducted with police officers, fire fighters, and emergency medical technicians (EMTs) at their workplaces. (Ex. 3, Rappeport Report at MOT 004679.) The interviews were geographically distributed throughout eight of the nine census regions of the United States. (*Id.*) The survey was “double blind.” (Ex. 3, Rappeport Report at MOT 004682.)

After respondents heard the Sound Mark, they were asked whether they recognized it. If a respondent answered that he or she did, the respondent was asked whether he or she was thinking of one company or more than one company whose product makes the sound. (Ex. 3, Rappeport Report at MOT 004681.)

One hundred and sixty four (164) respondents were interviewed. After accounting for “noise” through the use of three different controls (Ex. 3, Rappeport Report at MOT 004680), RL Associates concluded that 42% of the respondents recognized Motorola’s Sound Mark as coming from a single source. (Ex. 3, Rappeport Report at MOT 004686.) This level alone is

legally sufficient to establish that the Sound Mark has acquired distinctiveness. *See Textron, Inc. v. Int'l Trade Comm'n*, 224 U.S.P.Q. 625, 628 (Fed. Cir. 1985) (noting that 40% and 37% respondent recognition levels have been held to be sufficient to establish acquired distinctiveness).

b. Nextel's Response to the Sound Mark Survey

Surprisingly, Nextel has produced no survey, pilot study, pre-test or any other empirical evidence on the issue of whether the Sound Mark has acquired distinctiveness. Nor has Nextel presented any testimony from any witness, expert or otherwise, that challenges, contradicts, or even questions the results of the RL Associates survey. In other words, Nextel has *no evidence whatsoever* in response to the survey run by RL Associates.

Nextel must therefore resort to mere partisan argument, which does not discredit the RL Associates survey. *See Martahus v. Video Duplication Servs., Inc.*, 27 U.S.P.Q.2d 1846, 1849 (Fed. Cir. 1993) (“mere attorney arguments unsubstantiated by record evidence are suspect at best”). This is particularly so at the summary judgment stage. As a result, the survey run by RL Associates stands uncontradicted and by itself requires denial of Nextel's Motion.²

² Nextel's failure to offer evidence in support of its positions extends beyond its response to RL Associates survey. For example, Nextel asserts that: “As a general matter, consumers expect two-way radios (and other aural communications) devices to make audible tones that correlate to various operations of the products, and do not consider those sounds to act as source identifiers.” (Motion at 15.) Nextel does not cite to any record evidence in support of this assertion.

Nextel also claims that “[its] walkie-talkie phones are also marketed to and sold to public safety agencies.” (Motion at 3.) Also, that “[its] walkie-talkie phones compete directly with Motorola's two-way radios in that market.” (*Id.*) Both of these statements are supposedly supported by Opposer's Exhibit No. 5, which is described as a “Sprint Nextel Website Printout.” However, Nextel did not produce that document to Motorola during discovery, as evidenced by the fact that the document does not bear a Bates Number or any other production number. This argument is also disingenuous because the Nextel phones to which it refers are made by Motorola and bear the MOTOROLA trademark. (Ex. 9, O'Reilly Dep. at pp. 25 and 40. A copy of the deposition transcript of Nextel's 30(b)(6) witness, Ms. Allison O'Reilly, is

In any event, Nextel's attorneys' argument is baseless. At the beginning of each interview, respondents heard Motorola's Sound Mark and were then asked, "Please tell me what it is and what, if anything, you know about this sound." (Ex. 3, Rapoport Report at MOT 004681.) Fifty two percent (52%) of respondents identified the sound as coming from a two-way radio and/or a walkie-talkie. (Ex. 3, Rapoport Report at MOT 004684.) Those respondents were then asked whether one company or more than one company makes the radio and/or walkie-talkie. The respondents had already identified and tied the Sound Mark to a two-way radio and/or walkie-talkie. The only remaining question was whether the radio and/or walkie-talkie they were thinking of, and had already identified, was made by one source or more than one source. Forty-two percent (42%) identified a single source. This is a direct measure of acquired distinctiveness.

Nextel's attorneys next argue that the single-source association shown by the RL Associates survey "could only have resulted" because Motorola's word and symbol marks are affixed to its two-way radios. (Brief at 19.) However, the respondents were exposed only to Motorola's Sound Mark (and various controls) played from an audio CD. (Ex. 3, Rapoport Report at MOT 004680.) *They were never shown the radios.*

Nextel's attorneys also argue that only those respondents who specifically identified Motorola as the source of the radios and/or walkie-talkies qualify as evidence of acquired distinctiveness and that by this measure, the survey shows only 11% acquired distinctiveness. (Brief at 19 fn. 8.) This argument apparently means that it is not enough for consumers to

attached as Exhibit 9.)

Nextel's statements are unsupported by evidence properly in the record and must therefore be disregarded.

associate the Sound Mark with a single source, they must also identify it with the *correct* source. Nextel is flatly wrong on this point.

c. The *Tone Bros.* Decision

In *Tone Bros. v. Sysco Corp.*, 31 U.S.P.Q.2d 1321 (Fed. Cir. 1984), Tone Brothers sold spices packaged in a unique container to third party distributors, who applied their own label to the container and resold the spices to consumers. Approximately 90% of the containers were sold under private labels. Sysco came up with a similar container and Tone Brothers brought suit, claiming infringement.

The district court granted summary judgment for Sysco, finding that Tone Brothers' container had not acquired secondary meaning. But the Federal Circuit reversed based on (among other things) a survey that asked respondents first, whether they would identify the container with a single manufacturer and second, if so, which manufacturer they believed the container came from. In response to the first question, 37% of the respondents identified the container with a single manufacturer. However, with regard to the second question, respondents identified 20 different manufacturing sources. Tone Brothers was not the most-named source. In fact, more people identified Sysco as the source than identified Tone.

The Federal Circuit held that the answers to the first question alone evidenced a consumer association between Tone Brothers' container and a single source, which was all that was necessary to establish secondary meaning. *Id.* at 1329. This was required by the "single, anonymous source rule." *Id.* The fact that consumers did not know that it was Tone Brothers – and that they believed it to be others – who manufactured the spices was beside the point. *Id.* The survey, combined with other circumstantial evidence (advertising, sales, and evidence of intentional copying), raised a genuine issue of material fact as to secondary meaning. *Id.* at 1330. The court accordingly reversed and remanded the case for further proceedings.

By relying on *I.P. Lund Trading ApS v. Kohler Co.*, 56 U.S.P.Q.2d 1776 (D. Mass. 2000), in support of its argument, Nextel is asking the Board to follow a case that is contrary to the Federal Circuit's *Tone Bros.* decision, which controls this proceeding. *See* V. Palladino, SECONDARY MEANING SURVEYS IN LIGHT OF *LUND*, 91 Trademark Law Reporter 573, 614 (May-June 2001) (*Lund* violates the well-established anonymous source rule).

Lund is also inconsistent with the Lanham Act, which contains no requirement that a trademark identify the actual specific source of the goods. In fact, the Act specifies that the source need not be known. *See* 15 U.S.C. § 1127 (a trademark indicates the source of goods "even if that source is unknown"). *See also In re Polar Music Int'l AB*, 221 U.S.P.Q. 315, 317-18 (Fed. Cir. 1983) ("The source of the goods does not depend on the public's perception; the public need not know appellant's role. Thus, the board's holding that 'ABBA' cannot function as a trademark for recordings because the public would not know that appellant owns the rights in 'ABBA' and that it exercises quality control over the records must be rejected").

The same flaws are found in the other two district court cases Nextel relies on: *Zippo Manufacturing Co. v. Rogers Imports Inc.*, 137 U.S.P.Q. 413, 428 (S.D.N.Y. 1963) (court erroneously discounted a survey where respondents identified more than one manufacturer as the source), and *Carroll Shelby Licensing, Inc. v. Superformance Int'l, Inc.*, 251 F.Supp.2d 983, 986-87 (D. Mass. 2002) (court misapplied the anonymous source rule when it held that "Shelby must prove that the primary significance of the Cobra shape [trade dress] in the minds of consumers is to identify Shelby as the *single producer*"). The Board should not disregard the Federal Circuit's decision in *Tone Bros.* in favor of Nextel's three district court cases.

C. Nextel's Cited Precedent Fails to Support its Position that the Sound Mark is Unregistrable

1. The Sound Mark is Registrable if it is Distinctive

Nextel's argument that Motorola's claim of inherent distinctiveness and evidence of acquired distinctiveness is legally irrelevant has no merit. (Brief at 18.) Nextel cites four cases on this point, none of which is analogous to the case before the Board. None of Nextel's cited cases involve a sound mark, and each is distinguishable in other important respects as well.

The mark at issue in *In re G.D. Searle & Co.*, 149 U.S.P.Q. 619 (C.C.P.A. 1966), was "the pill" for use on birth control pills. The Court held that "the pill" identified the product itself and was therefore generic. Consequently, the Court held that the applicant's 2(f) evidence would not be considered. Nextel's Notice of Opposition does not allege that Motorola's Sound Mark is generic for two-way radios.

The second case is the Supreme Court's decision in *TrafFix Devices, Inc. v. Marketing Displays, Inc.*, 58 U.S.P.Q.2d 1001 (2001). The alleged trade at issue was a temporary road sign built on two springs to keep the sign upright in the face of strong winds. The issue in the case was "the effect of an expired patent on a claim of trade dress infringement." *Id.* at 1005. There are no parallel facts or legal issues here.

The third case cited by Nextel is *In re Tilcon Warren, Inc.*, 221 U.S.P.Q. 86 (T.T.A.B. 1984). The alleged mark was the phrase WATCH THAT CHILD used on the bumper of construction vehicles. The Board affirmed the Examiner's refusal to register the phrase because it was "a familiar safety slogan" that would be understood as informational (cautionary). Moreover, the Board in *Tilcon* stated that even if it had some doubt on the question, the Examining Attorney was entitled "to a presumption" on whether the subject matter served or did not serve to indicate origin. *Id.* at 88. To the extent Nextel relies on *Tilcon*, the Board must give

presumptive weight to the Examining Attorney's decision that Motorola's Sound Mark is registrable.

The issue in *In re Niagara Frontier Services, Inc.*, 221 U.S.P.Q. 284 (T.T.A.B. 183), the last case Nextel relies on, was whether the slogan WE MAKE IT, YOU BAKE IT! was registrable for supermarket grocery store services. In denying registration, the Board found that the applicant used the mark only in connection with particular goods (pizza) offered in applicant's store. As such, the use could not support applicant's attempted registration of the phrase as a *service* mark. *Id.* at 285. Here, Motorola is not seeking to register its Sound Mark as a service mark but as a trademark.

2. The Sound Mark is Registrable if it Performs a Source-Identifying Function

Nextel's cited precedent does not support its argument that dual purpose marks are unprotectable as trademarks. They are merely cases dealing with deficient specimens of use. For example, *In re Morganroth*, 208 U.S.P.Q. 284 (T.T.A.B. 1980), merely stands for the proposition that a word mark appearing in text must be used in a prominent manner to serve as a trademark. *See id.* at 288 (affirming refusal because word mark was "so obfuscated in the whole scene that it is hardly likely to make any impact..."). It bears no relevance to the present case. Similarly in, *In re Moody's Investors Svc. Inc.*, 13 U.S.P.Q.2d 2043 (T.T.A.B. 1989), the Board affirmed an Examiner's refusal to register applicant's "Aaa" word mark based on faulty specimens. *See id.* at 2048-49. However, the Board went on to note that the applicant's asserted mark, if properly depicted in specimens, was capable of functioning as a mark in connection with services relating to ratings for fixed interest rates. In doing so, the Board again recognized the concept of dual purpose trademarks. "While it is not inconceivable that a particular designation

could be used, and therefore function, both as a rating symbol and as a trademark or service mark, applicant's designation "Aaa" is not so used in the specimens of record." *Id.* at 2049.

Nextel also cites a Fourth Circuit case, *Microstrategy Inc. v. Motorola*, 245 F.3d 335, 342 (4th Cir. 2001), which also stands for the proposition that word mark must be prominently displayed. In *Microstrategy*, the court declined to protect plaintiff's alleged word mark because plaintiff used it solely as a phrase in common language and not as a mark. The evidence showed that the plaintiff did not consistently place the mark on a "particular part of the page, or in a particular type," or label it with "TM," or consistently use a "distinctive font, color, typeset or any other method that makes 'its nature and function readily apparent and recognizable...'" *See id.* at 342. In contrast, the evidence of record establishes that Motorola has gone to great lengths to consistently use its Sound Mark in a consistent manner in each successive two-way radio model and that it has successfully taught consumers to recognize the mark. (Ex. 1, Klein Dep. at pp. 13-14, 28.) Nextel's additional citations are similarly inapplicable. *In re Scientific Methods, Inc.*, 201 U.S.P.Q. 917 (T.T.A.B. 1979) and *In re Bose Corp.*, 192 U.S.P.Q. 213 (C.C.P.A. 1976) address deficiencies in applicants' specimens of record. *In re Upper Deck Co.*, 59 U.S.P.Q.2d 1688 (T.T.A.B. 2001), addresses "phantom marks."

V. MOTOROLA WITHDRAWS ITS LACHES/ACQUIESCENCE DEFENSE

Motorola hereby withdraws its affirmative defense of laches and/or acquiescence.

VI. CONCLUSION

Motorola has shown that the Sound Mark is distinctive, that it has acquired distinctiveness, that the Sound Mark is applied to the goods, and that the relevant consumers recognize it as the identifier of a single source. Nextel has failed to establish that any more is required as a matter of law. In addition, Nextel's summary judgment papers do not establish that

there are no genuine issues of material fact that entitle it to judgment as a matter of law. For the foregoing reasons, Motorola respectfully requests that Nextel's motion for summary judgment be denied.³

Respectfully submitted,

Dated: December 19, 2005

MOTOROLA, INC.

By



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Attorneys for Applicant

³ In contrast, applicant Motorola is entitled to summary judgment in its favor due to Nextel's failure to present any evidence in support of its grounds for opposition. Motorola has filed a motion for summary judgment.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of APPLICANT'S OPPOSITION TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT was served on counsel for Opposer on
December 19, 2005, electronically and via First Class Mail, postage prepaid:

Michael H. Jacobs
Crowell & Moring LLP
1001 Pennsylvania, Avenue, N.W.
Washington D.C. 20004



EXHIBIT 1

Nextel Communications, Inc., Opposer, v. Motorola, Inc., Applicant
Opposition No.: 91/161,817
Application No.: 78/235,618
Mark: Sensory Mark (911 Hz Tone)

Exhibit 1 in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

COPY

NEXTEL COMMUNICATIONS, INC.,)
) Opposer,) Opp. No. 91/161,817
vs.) App. No. 78/235,618
MOTOROLA, INC.,) Pot. Mark: SENSORY MARK
) Applicant.) (911 Hz tone)

The videotape deposition of DAVID ERIC KLEIN,
called by the Opposer for examination, taken before
RICHARD H. DAGDIGIAN, CSR No. 084-000035, a notary public
within and for the County of Cook, State of Illinois, and a
Certified Shorthand Reporter of said State, at the offices
of Brinks Hofer Gilson & Liene, 455 North Cityfront Plaza
Drive, Suite 3600, on the 19th day of Jul 2005, commencing
at 10:15 a.m.

1 APPEARANCES:

2 CROWELL & MORING

3 BY: JOHN I. STEWART, ESQ.

4 KAREN C. HERMANN, ESQ.

5 1001 Pennsylvanie Avenue, NW

6 Washington, D.C. 20004-2595

7 (202) 624-2685

8 on behalf of the Opposer;

9
10 BRINKS HOFER GILSON & LIONE

11 BY: THOMAS M. WILLIAMS, ESQ.

12 455 N. Cityfront Plaza Drive, Suite 3600

13 Chicago, Illinois 60611-5599

14 (312) 321-4717

15 on behalf of the Applicant.

16
17 ALSO PRESENT:

18 CAROLYN E. KNECHT, ESQ.

19 Senior Counsel Trademarks,

20 and

21 KRISTEN POGGENSEE, Paralegal Associate,

22 Corporate Law Department

23 Motorola, Inc.

24
25 DEAN MARIS, Legal Videographer

I N D E X

THE WITNESS

EXAMINATION BY COUNSEL FOR

OPPOSER

APPLICANT

DAVID ERIC KLEIN

(By Mr. Stewart)

6

E X H I B I T S

KLEIN DEPOSITION EXHIBIT

FOR IDENTIFICATION

No. 1	10
No. 2	25
No. 3	61
No. 4	66
No. 5	68
No. 6	76
No. 7	78
No. 8	106
No. 9	106
No. 10 (Physical exhibit-retained)	111
No. 11 (Physical exhibit-retained)	111
No. 12	120

1 THE VIDEOGRAPHER: Here begins the video deposition
2 of David Klein, Tape One, Volume One, in the Matter of
3 Nextel Communications, Inc. versus Motorola, Inc, in the
4 United States Patent and Trademark Office before the
5 Trademark Trial and Appeal Board, Opposer Number 91/161,817
6 and Application Number 78/235,618.

7 Today's date is Tuesday, July 19, 2005, and the
8 time on the video monitor is 10:15 a.m.

9 The video operator today is Dean Maris of
10 Thompson Court Reporters located at One South Wacker Drive,
11 Suite 1616, Chicago, Illinois 60606, and the phone number is
12 312-346-3377.

13 The court reporter is Richard Dagdigian of
14 Thompson Court Reporters.

15 Today's deposition is being taken on behalf of
16 the opposer, and it is taking place at Brinks Hofer Gilson &
17 Lione at 454 North Cityfront Plaza Drive, Suite 3600,
18 Chicago Illinois, 60611.

19 Counsel will now introduce themselves and state
20 the parties they represent after which the court reporter
21 will administer the oath.

22 MR. STEWART: Good morning. I'm John Stewart, and
23 this is my colleague, Karen Hermann. We are here from
24 Crowell & Moring in Washington D.C., and we are here
25 representing Nextel Communications.

1 MR. WILLIAMS: I'm Thomas Williams from the law firm
2 Brinks Hofer Gilson & Lione, and I'm here on behalf of
3 Motorola, Incorporated, the applicant.

4 DAVID ERIC KLEIN,
5 called as a witness, having been first duly sworn by
6 the Notary Public, was examined and testified as
7 follows:

8 MR. WILLIAMS: I have a brief statement. Motorola
9 objects to this discovery deposition being recorded on
10 videotape.

11 First of all, the Board rules, ^{T3MP} ~~FMF~~ 703.01I
12 states that, "A deposition must be submitted to the Board in
13 written form. The Board does not accept videotape
14 depositions".

15 Second, it was unclear from the notice of
16 deposition which used the language "and/or" that this
17 discovery deposition would be videotaped.

18 And, third, much of this witness' testimony will
19 relate to confidential material.

20 We designate the entire videotape and the written
21 transcript as "Confidential, Attorneys' Eyes Only" until we
22 have had the opportunity to carefully review the testimony,
23 including the videotape, and to modify any confidentiality
24 designations appropriate.
25

1 MR. STEWART: Thank you for that statement.

2 EXAMINATION

3 BY MR. STEWART:

4 Q Good morning, Mr. Klein. Have you ever been
5 deposed before?

6 A No, sir.

7 Q Well, then I'm sure that you have talked with
8 your counsel about what will transpire today, but let me
9 just describe to you a bit.

10 I'm going to be asking you questions with respect
11 to issues that are -- that we have raised in our notice of
12 deposition. And you are to provide me answers. Your
13 answers are under oath.

14 I would ask that if you do not understand any
15 question that I ask, please let me know that and I will see
16 what I can do to clarify it for you.

17 If you need a break at any time, please let me
18 know at the end of an answer to a question. And if you can
19 do that, then we will see what we can do to accommodate you.

20 If you ever need to talk to your counsel, please
21 finish a response to a question, if you are in the middle of
22 a response, and then we can take a break for you to talk
23 with your counsel, if that's necessary.

24 Please make sure that you provide your answers in
25 an audible fashion. This is being recorded both by the

1 stenographer and on videotape.

2 A Okay.

3 Q Is there anything that we should know about that
4 would make it -- that would hamper your ability today to
5 answer questions completely and fully?

6 A Not that I'm aware of.

7 Q Okay. Then let's get started. Would you state
8 your full name, please.

9 A My full name is David Eric Klein.

10 Q What is your position at Motorola?

11 A I am a marketing manager.

12 Q And how long have you been in that position?

13 A My current position I've been in for
14 approximately three years.

15 Q And before that, were you with Motorola?

16 A Yes, sir.

17 Q How long have you been with Motorola?

18 A I've been with Motorola since May 22nd, 1995.

19 Q And what was your position prior to marketing
20 manager?

21 A My position immediately prior to marketing
22 manager was a marketing portfolio planner.

23 Q And how long were you a marketing portfolio
24 planner?

25 A For two years.

1 Q And how about before that?

2 A Before that, I was an engineer in product
3 development.

4 Q I see. And how long were you in that position?

5 A I was in that position or that former position
6 for five years.

7 Q For five years. And that takes you back to 1995?

8 A Correct.

9 Q Okay. And where were you before Motorola?

10 A University of Florida.

11 Q What kinds of degree program?

12 A I got a bachelor's of science in electrical
13 engineering specializing in digital design.

14 Q So you came directly -- was Motorola your first
15 employment after receiving that bachelor of science in
16 engineering?

17 A Yes, it was.

18 Q Okay. While you were an engineer in product
19 development, was there a particular type of product that you
20 worked on?

21 A During my stay as a product engineer, I developed
22 the tools that were used to place information within the
23 radio -- customer information, customized information.

24 Q And was that with respect -- was that with
25 respect to a lot of different Motorola products or one

1 particular product line?

2 A It was specific to Motorola's Type 2 Trunking for
3 Analog and their APCO Digital Trunking, in addition to
4 variants of their conventional offering.

5 Q Now, currently, as a marketing manager, is that
6 with respect to a particular product line?

7 A I'm currently a marketing manager for what is
8 referred to as our High Tier Products; these products that
9 do our Motorola Type 2 trunking, our APCO trunking and APCO
10 Project 25 trunking, and variants of conventional
11 operation.

12 Q Okay. Now, we are here today to take your
13 deposition -- to take the deposition of Motorola pursuant to
14 the notice of deposition which we reissued as a Re-notice of
15 Deposition of Applicant Motorola, Inc.

16 Now, you understand you are here in a
17 representative capacity speaking on behalf of Motorola
18 itself?

19 A Yes, I do.

20 Q Pursuant to the rules, we have identified
21 particular topics that we are interested in asking questions
22 about.

23 And under the rules, you have been designated to
24 address all of those topics. Do you understand that?

25 A I do.

1 MR. STEWART: I want to ask that the reporter mark as
2 Klein Exhibit 1 a copy which I will hand you in just a
3 moment of the re-notice of deposition of Applicant Motorola,
4 Inc.

5 (Klein Deposition Exhibit
6 No. 1 was marked as
7 requested.)

8 BY MR. STEWART:

9 Q Would you take a minute to review that document
10 and, in particular, the list of topics with respect to which
11 we are going to be asking you questions, the subject matter
12 categories.

13 A Okay.

14 Q Okay. Have you reviewed this Klein Exhibit 1
15 previously?

16 A I have seen and read the document.

17 Q Okay. With respect to the subject matter
18 categories that are numbered 1 through 15, are you the
19 person at Motorola most qualified to discuss each of those
20 topics?

21 MR. WILLIAMS: Objection. Under the rules, he
22 doesn't necessarily have to be the person most qualified.
23 He's being designated today on behalf of Motorola

24 BY MR. STEWART:

25 Q Are you prepared to address each of those 15

1 categories Mr. Klein?

2 A I'm prepared to the best of my knowledge to
3 address the 15 categories.

4 Q Are there people within Motorola who would be
5 more knowledgeable with respect to particular ones of these
6 15 categories.

7 MR. WILLIAMS: Objection, that's vague and
8 ambiguous.

9 BY MR. STEWART:

10 Q You may answer the question.

11 A I am unaware of specific people who would be
12 readily available to answer all 15 elements.

13 Q Well, with respect to any particular ones of
14 those, are there people in Motorola who are more qualified
15 or have more information to answer questions about those
16 particular topics?

17 MR. WILLIAMS: Objection, that's vague and
18 ambiguous.

19 BY MR. STEWART:

20 Q Please answer the question.

21 A I do not know.

22 Q Okay. We will come back to that.

23 Now, to what extent have you had personal
24 involvement in the facts underlying these subject matter
25 categories?

1 MR. WILLIAMS: Objection to the extent that that
2 question calls for revealing privileged communications
3 between the lawyer and the client.

4 BY MR. STEWART:

5 Q Please answer.

6 A Will you repeat the question.

7 Q To what extent have you had personal involvement
8 in the facts relating to each of these 15 topics?

9 MR. WILLIAMS: I instruct you not to answer to the
10 extent that your answer would involve revealing
11 communications that you have had with the lawyers or the
12 Legal Department.

13 A I have read company documentation and seen
14 company records related to the topics.

15 BY MR. STEWART:

16 Q With respect to the work that you have done for
17 Motorola in marketing and as an engineer, have you -- were
18 you involved in any of these subject matters?

19 A I have worked on products that include the 911
20 Hz Tone.

21 Q Have you worked on any aspect of the creation,
22 selection or incorporation of the 911 Hz Tone itself?

23 A Yes.

24 Q Explain how that has happened, please.

25 MR. WILLIAMS: Objection, that's vague.

1 BY MR. STEWART:

2 Q Answer, please.

3 A The tone is a standard within these products, and
4 we have adhered to that standard.

5 Q And for you personally as an engineer, how has --
6 how did you implement that adherence, or what exactly did
7 you do with respect to the 911 Hz Tone itself?

8 A Can you clarify.

9 Q Yes. You said you worked on the creation,
10 selection or incorporation of the 911 Hz Tone itself, is
11 that correct?

12 A In current products, yes.

13 Q In current products, yes. Can you tell me
14 exactly what your work consisted of? How did -- let me end
15 it there.

16 A In the current products, my effort was specific
17 to insuring that the products utilize the specific 911 Hz
18 Tone as we have done in previous products for consistency.

19 Q And in doing so, how did you go about that?

20 A That included requiring the appropriate pitch and
21 cadence of the tone; the inclusion of the description of the
22 tone in manuals; verification that the operation overall of
23 the products in the customers' hands when they used
24 operations involving the tone matched previous products.
25 That's pretty much it.

1 Q First, you said requiring the appropriate cadence
2 and tone for purposes of consistency, is that right?

3 A Yes.

4 Q In what capacity did you require that?

5 A It is stipulated as a requirement to the
6 products.

7 Q In what form is that stipulation or that
8 requirement stipulated?

9 A The stipulation comes in the general form of the
10 product that is being replaced must match functionality.
11 The new product that's replacing the old product must match
12 functionality. It's more of a blanket statement of
13 operation.

14 Q Is that in writing?

15 A To the best of my knowledge, I believe it is.

16 Q That it is in writing?

17 A Yes.

18 Q In what form?

19 A Internal documents, a stipulation of definition
20 of the products.

21 MR. STEWART: We would ask if that document has not
22 been produced to us, that it be produced to us at this
23 point.

24 Are you aware of whether that document has been
25 produced.

1 MR. WILLIAMS: We will take that request under
2 advisement.

3 MR. STEWART: Thanks. I'm sorry, go ahead.

4 A Nothing.

5 BY MR. STEWART:

6 Q Okay. Let me ask, have you reviewed all of the
7 documents that were produced by Motorola to Nextel in
8 response to Nextel's discovery requests in this proceeding?

9 A I am unsure. I have reviewed some -- I have
10 reviewed documentation. I'm unsure if it's the full scope
11 of documentation.

12 Q Was the stipulated requirement that you just
13 described among the documents you reviewed?

14 A For the purpose of this activity, it was not part
15 of the documents that I reviewed.

16 Q Did you review it separately?

17 A Yes, during natural job functions and activities.

18 Q When was that?

19 A Over the last two or three years of actual job
20 functions, documentations that describe products are seen
21 and reviewed.

22 Q So that was while you were in your position as
23 marketing manager, correct?

24 A Between marketing manager and portfolio planner.

25 Q While you were an engineer, did you see such

1 stipulated requirement?

2 A I did not see stipulated requirement because
3 those stipulated requirements were not in the particular
4 documentation I worked with on a day-to-day basis.

5 Q Why not?

6 MR. WILLIAMS: Objection, that's vague.

7 A I need a little bit of clarity.

8 BY MR. STEWART:

9 Q What were you working on that was different?

10 I'm sorry, were you working on some area of
11 functionality of the devices that was different from that
12 that included the 911 Hz Tone?

13 A I worked on a PC based application software that
14 placed configuration information into the products.

15 So I was not part of the group that developed the
16 911 tone for particular products.

17 I was a person who worked on a slightly different
18 aspect of the overall delivery of the products.

19 Q You mentioned that you had reviewed documents.
20 What else have you done to prepare yourself for the
21 deposition today?

22 MR. WILLIAMS: Objection. To the extent that your
23 answer would reveal communications between the lawyers and
24 yourself, I instruct you not to answer.

25 A I reviewed user manuals, I reviewed product

1 description documents. These would be internal documents
2 that Engineering uses to describe the products.

3 And I looked at training information in reference
4 to the frequency tone, had discussion with Motorola
5 employees concerning the frequency tone.

6 BY MR. STEWART:

7 Q With which Motorola employees did you speak?

8 A Mitch ^{Leshin} ~~Leshin~~, ^{Leshin} ~~Leshin~~, I believe, and Dave
9 Mills.

10 Q And what are their positions in Motorola?

11 A They are engineering managers.

12 Q Are they managers with respect to particular
13 product lines?

14 A They are managers with product lines that I'm
15 directly related to, which would be Motorola Type 2
16 Trunking, Astro -- the APCO Trunking and APCO Project 25
17 Trunking, and other forms of conventional operation.

18 Q And if you know, how long have they been with
19 Motorola?

20 A I do not know their tenure at Motorola, the
21 length of it.

22 Q Why did you speak with them?

23 MR. WILLIAMS: Object to the extent that your answer
24 calls for revealing communications between the lawyers and
25 yourself.

1 A I spoke with both gentlemen in concern with
2 general availability and engineering effort to support and
3 interact with the 911 Hz Tone.

4 BY MR. STEWART:

5 Q What do you mean by availability?

6 A I guess implementation would be a more
7 appropriate term. How they implemented the tone in
8 different products.

9 Q Did you talk to them with respect to 911 Hz Tone
10 products that are not current products?

11 A I spoke with them about previous 911 Hz Tone
12 products.

13 Q Did they have direct knowledge of previous 911 Hz
14 Tone products?

15 A Mitch ^{Leshin}~~Leshin~~ had knowledge about previous 911 Hz
16 Tone products.

17 Q And Dave Mills did not?

18 A Not beyond common knowledge of the 911 Hz Tone
19 products.

20 Q Did you do anything else to prepare?

21 A Not beyond my daily job functions and my own
22 personal history and interaction with the products, no.

23 Q Did you speak to anyone other than Mitch ^{Leshin}~~Leshin~~
24 and Dave Mills?

25 MR. WILLIAMS: Objection to the extent your answer

1 would call for revealing communications between the lawyers
2 and yourself.

3 A I did speak with Marlon Moo-Young, M-o-o -
4 Y-o-u-n-g, Marlon Moo-Young, concerning his understanding of
5 the tone. He -- I worked with him on understanding the
6 tone.

7 I have spoken to his manager, Tim Quirey,
8 concerning the tone.

9 BY MR. STEWART:

10 Q How do you spell Quirey?

11 A Q-u-i-r-e-y, I believe.

12 Q What are their respective positions?

13 A Marlon Moo-Young manages the engineering support
14 team, assisting customers in the field, and Tim is his
15 manager for that organization.

16 Q Did you obtain any documents from any of these
17 four individuals?

18 A Not that I'm aware of. In other words, no --
19 they turned over no documentation to me for -- for this
20 tone.

21 Q Did you take notes of your conversations with
22 them?

23 A I do have notes. I do have notes that Mitch and
24 I -- Mitch and I had a conversation with.

25 MR. STEWART: We would ask for the production of

1 those notes.

2 MR. WILLIAMS: We will take that under advisement.

3 BY MR. STEWART:

4 Q Did you talk with any other individuals?

5 A Specifically about the 911 Hz Tone, let me think.
6 I had spoken to our Training Department, specifically one of
7 our training developers, Janice Morey; M-o-r-e-y is her last
8 name.

9 She is, for lack of a better term, an author of
10 our -- of our user guides and training material.

11 Q What did you discuss with her?

12 A The presence of training information related to
13 the 911 Hz Tone.

14 Q And did you collect documents from her?

15 A Yes, I did.

16 MR. STEWART: We would ask for those documents, to
17 the extent they haven't already been produced, or for their
18 identification if they have already been produced.

19 MR. WILLIAMS: We will take that under advisement.

20 BY MR. STEWART:

21 Q Did you take notes of your conversations with
22 Janice Morey?

23 A No, I did not.

24 Q Did you talk with other individuals?

25 A No, I actually never did -- there would be -- I

1 was directed to, oddly enough, Dave Klein, as he manages the
2 Training Department, but he was out of town.

3 Q And is that the only other person you tried to
4 speak with in preparing for this deposition?

5 A I was directed to Monica Gingells -- don't ask me
6 to spell it -- and who I never really had a chance to have
7 any conversation with either.

8 Q And what's her position?

9 A My assumption is she is assisting in management
10 of the Training Department while David Klein is on vacation.
11 That is merely an assumption.

12 Q Okay. Are there any other individuals you spoke
13 with in preparing for the deposition?

14 A I did speak with Mary ^{Pittman} ~~Pitman~~.

15 Q Who is that?

16 A She handles our -- I'm not really sure what her
17 actual title is. She handles -- if we sell products to an
18 integrator company, something like that.

19 Q So she is in sales?

20 A Not that I'm aware of. As near as I know, she is
21 just part of the North American Business Team. That's our
22 title for that group.

23 Q Any other individuals?

24 A Not that I'm aware of.

25 Q Did you collect documents from Mary ^{Pittman} ~~Pitman~~?

1 A No, I did not.

2 Q Did you take notes of conversations with her?

3 A Verbal only.

4 Q So the answer is no?

5 A No.

6 Q Then let me read you the list we have just gone
7 through.

8 Mitch Leshim, Dave Mills, Marlon Moo-Young, Tim
9 Quirey, Janice Morey, and Mary Pitman were the individuals
10 you identified as people you talked to in preparing for this
11 deposition?

12 A Correct.

13 Q Any others come to mind?

14 A None that I'm aware of.

15 Q And when did these conversations take place
16 roughly?

17 A In the last two weeks or so.

18 Q Did you speak with anyone in sales or marketing?

19 A You would have to define marketing because we
20 have a -- different definitions of marketing within our
21 organization.

22 Q I would like to get all the details of that, but
23 did you talk with anybody who was involved in sales or
24 marketing activities or responsibilities in a general sense?

25 A Yes, I did. Yes, I did. I did speak with Linda

1 Serges.

2 Q How do you spell her name?

3 A S-e-r-g-e-s, I believe. She is -- she does
4 management for some of our promotional trade show and user
5 interaction groups.

6 Q and did you collect documents from her?

7 A Yes, I did.

8 MR. STEWART: We ask that those be produced or
9 identified if they have already been produced.

10 MR. WILLIAMS: We will take that under advisement.

11 BY MR. STEWART:

12 Q Did you take notes of any conversations with her?

13 A No, I did not take any notes of our conversation.
14 It was strictly verbal.

15 Q Any other people that now come to mind?

16 A It's been a busy few weeks. I did speak with Joe
17 Balchune, B-a-l-c-h-u-n-e, I believe. I should know this.

18 And he identified, in association with
19 conversations with Mary ^{Pittman} ~~Pitman~~ -- he identified, again,
20 products that we have sold to integrators.

21 Q Define product integrators or integrators in this
22 context.

23 A Companies who purchase products from us to be
24 integrated into a larger product or a larger final product.

25 Q All right. We have added these two -- two

1 Serges.

2 Q How do you spell her name?

3 A S-e-r-g-e-s, I believe. She is -- she does
4 management for some of our promotional trade show and user
5 interaction groups.

6 Q and did you collect documents from her?

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19 conversations with Mary Pitman -- he identified, again,
20 products that we have sold to integrators.

21 Q Define product integrators or integrators in this
22 context.

23 A Companies who purchase products from us to be
24 integrated into a larger product or a larger final product.

25 Q All right. We have added these two -- two

1 additional names, Linda Serges and Joe Balchune.

2 Did you speak with any other individuals in
3 preparing for the deposition?

4 A No, no.

5 Q Okay. Did you communicate with any of these
6 people or others by e-mail in preparing for this deposition?

7 A I did communicate with multiple of those people
8 via e-mail.

9 MR. STEWART: All right. And we would ask for those
10 e-mails to be produced.

11 MR. WILLIAMS: We will take that under advisement.

12 BY MR. STEWART:

13 Q Did you communicate by e-mail to any other
14 individuals?

15 A Concerning the 911 Hz Tone?

16 Q Uh hum.

17 A Not that I'm aware of.

18 Q Did you speak with anyone who was responsible for
19 engaged in advertising activities?

20 A That would be -- please identify your concept of
21 advertising.

22 We do it in a multitude of ways.

23 Q Well, you've talked about promotion and trade
24 shows and user interaction groups.

25 Let me come back to that when I talk more

1 specifically about the advertising. I think it will be
2 clearer if we break it all down.

3 But with respect to any kinds of marketing and
4 promotion, are Linda Serges -- is Linda Serges the only
5 person you spoke with in preparing for this deposition?

6 A Linda Serges is the only person I spoke with as
7 far as managing trade shows, promotional events and user
8 groups.

9 Q And what -- who else did you speak to with
10 respect to other kinds of marketing activities?

11 A Our training organization develops tools as such,
12 so it would be Janice Morey.

13 MR. STEWART: Okay. All right. I would like to
14 have marked as Klein Exhibit 2 the file history reflecting
15 the PTO records on the Motorola application for trademark
16 registration for the 911 Hz Tone.

17 (Klein Deposition Exhibit
18 No. 2 was marked as
19 requested.)

20 BY MR. STEWART:

21 Q Have you ever seen this -- I'm sorry, continue
22 reviewing the document.

23 Have you seen this document before?

24 A No, I have not.

25 Q All right. If you would turn to the very last

1 page of this document which is labeled MOT 002015 -- do you
2 see that?

3 A Yes, I do.

4 Q Do you see in the identification of
5 "Goods/Services" down in the left hand column there, an
6 indication that goods and services are two-way radios,
7 immediately to the right of that?

8 A I do see that.

9 Q Now, are you aware of the scope of the rights
10 being sought in this registration application?

11 MR. WILLIAMS: Objection, that calls for a legal
12 conclusion. This is a fact witness.

13 BY MR. STEWART:

14 Q You may answer.

15 A I do not know the full ramifications of this
16 statement.

17 Q If you -- in Klein Exhibit 1, which is the
18 re-notice of deposition that we showed you before, you have
19 a defined term on Page four, the definition numbered eight.
20 Do you see that there?

21 A Correct.

22 Q That's a definition of the 911 Hz Tone products.

23 A Okay.

24 Q And we have defined that as meaning the goods
25 that are being applied for which registration is being

1 applied for by Motorola in this 911 Hz proceeding, okay?

2 A Okay.

3 Q Now, using that as a basis, I would like to talk
4 with you about kind of the nomenclature and the way you
5 understand the nature of those products.

6 A So for clarification, you are asking me to --
7 when we discuss two-way radios, that I am to assume the
8 definition to be 911 Hz Tone products?

9 Q I want to do it the other way around. The 911 Hz
10 Tone products, for purposes of our discussion right now, and
11 throughout this deposition, unless we revisit this, is going
12 to refer to all the Motorola products identified as two-way
13 radios for which the registration application has been
14 filed.

15 MR. WILLIAMS: I'm going to renew my objection based
16 on the fact that he's a fact witness, and he's not
17 designated to testify about the Patent & Trademark Office
18 identifications of goods and services.

19 BY MR. STEWART:

20 Q I'm sorry. Go ahead.

21 A So when you stipulate two-way radios, I'm to
22 assume you are referring to 911 Hz Tone products? Is that
23 my understanding?

24 Q I'm going to be using 911 Hz Tone products to
25 refer to whatever it is that Motorola is seeking the

1 registration to cover in this proceeding.

2 A Okay.

3 Q Do you have an understanding yourself of what is
4 meant by 911 Hz Tone products?

5 A I do.

6 Q What is that understanding?

7 A My understanding of this term is that it is a
8 product that produces a particular cadence at a pitch of 911
9 Hz or thereabouts, and it represents two things within the
10 products.

11 One is, the audio path is open and the ^{microphone} ~~mike~~ is
12 available to transmit the audio spoken, and that it refers
13 to Motorola products.

14 Q Are there any products manufactured by --
15 manufactured or sold or offered for sale by Motorola that
16 incorporate the 911 Hz Tone, this particular sound that you
17 have described, but are not two-way radios?

18 A None that I'm aware of.

19 Q Are you generally aware of all of the Motorola
20 products that incorporate this 911 Hz Tone?

21 A I am not an expert in all Motorola products. I
22 have familiarity with the products that are associated with
23 the GEMS, G-E-M-S -- GEMS organization within Motorola.

24 Q What is the GEMS organization?

25 A Specifically a business organization within

1 Motorola who -- who sells our definition of two-way
2 products.

3 Q And what is that definition of two-way products?
4 I'm sorry, what does your definition of two-way products
5 encompass?

6 A My definition of two-way products encompasses
7 private or leased radio systems, hand-held devices, and
8 dispatch centers that allow for immediate group dispatch or
9 direct unit-to-unit communications.

10 Q Do you use the distinction indirect or direct
11 communications devices in this context?

12 A Those are internal nomenclature for the overall
13 market.

14 Q And what do those two terms mean in this context?

15 A Indirect specifically is a portion of our
16 business where we sell to shops, businesses, such that they
17 can lease out equipment to other users, essentially
18 intermediates, organizations, private organizations that we
19 sell to; and then they either resell or lease or rent,
20 versus direct, where we have a direct customer interaction
21 with the sales force.

22 These customers are larger customers that will
23 own their own private systems, maintain their systems.

24 Q Do the -- you identified three, if I understood
25 this correctly, three categories of two-way products within

1 the GEMS organization. The first was private or leased
2 radio systems, the second was hand-held devices, third was
3 group dispatch systems and devices?

4 A Group system dispatch and devices are more of an
5 attribute to the hand-helds.

6 They also -- there is also an organization or a
7 group of products that are for dispatch centers such that it
8 is still a two-way, but is a two-way product, but it's
9 within, say, a building or actually mobile.

10 Q Is that covered within the GEMS organization?

11 A Yes, it is.

12 Q And that's within the scope of the products that
13 you are considering the 911 Hz Tone products?

14 A I have more familiarity with the hand-held or the
15 mobile products, whether it's hand-held or whether it's
16 installed in a vehicle, than I do of the infrastructure and
17 dispatch groups.

18 But I have some working familiarity with those
19 organizations as per my job.

20 Q Are any of these categories of two-way products
21 -- do any of them, I'm sorry, operate in a direct hand-held
22 to hand-held communication path as opposed to through a
23 central control or network?

24 A For our term, we refer to that as infrastructure.
25 A significant number of -- I take that back.

1 Currently, to the best of my knowledge, all of
2 the products that we make available for sale on indirect and
3 direct markets support a direct unit-to-unit without --
4 without going through a system or infrastructure.

5 Now, not all features are available, but they do
6 operate.

7 Q Do any of the products encompassed within this
8 business organization operate solely in a unit-to-unit mode?

9 A Can you repeat the question.

10 Q Do any of the two-way products that you have
11 described as being within the GEMS organization operate
12 solely in a unit-to-unit mode?

13 A Yes. There are a number of lower cost, lower
14 priced products that operates only in a unit to unit method.

15 Q Now, does the GEMS organization also produce or
16 sell products other than two-way products?

17 A GEMS, to the best of my knowledge -- it goes back
18 -- I cannot fully categorically answer that because of the
19 definition of what is a two-way radio.

20 We have products that operate, sending and
21 receiving messages, which constitutes a two-way product, so
22 I'm not sure how to respond to that given verbiage.

23 Q You are distinguishing between two-way products
24 and two-way radio products, do I understand you correctly?

25 A Well, I don't -- I guess I need to understand the

1 question. You -- can you repeat the question.

2 Q Is the GEMS organization responsible for
3 producing or selling products other than two-way products?

4 A We do sell data products. They again work under
5 the same principle of two-way products, so I don't know if
6 there is a distinction between those.

7 Q I want to come around and ask you in the end,
8 then, does every two-way product sold -- produced by and
9 sold by the GEMS organization include the 911 Hz Tone?

10 A The products that generate that tone are trunking
11 infrastructure utilized products.

12 If a product utilizes or has the opportunity to
13 utilize that function, those products can generate a 911 Hz
14 Tone.

15 Q So there are additional products, two-way
16 products that do not use the 911 Hz Tone within the GEMS
17 organization?

18 A There are 911 -- there are two-way products that
19 do not utilize the 911 Hz Tone.

20 Q Can you identify those products?

21 A Specifically those products are products that are
22 not designed to operate on infrastructure systems.

23 Q And this would include the lower priced
24 unit-to-unit --

25 A Correct --

1 Q Products. Okay. So just to confirm, every
2 product designed to utilize trunking infrastructure within
3 the GEMS organization uses the 911 Hz Tone?

4 A For clarity, every voice product.

5 Q And with that clarification, that was a true
6 statement that I made, is that correct?

7 MR. WILLIAMS: Objection, that's vague and
8 ambiguous.

9 BY MR. STEWART:

10 Q Let me restate it. Every voice product produced
11 or offered for sale by the GEMS organization that is capable
12 of utilizing trunking infrastructure incorporates the 911 Hz
13 Tone, is that correct?

14 A That is a correct statement.

15 Q Are there other products produced or offered for
16 sale by Motorola outside the GEMS organization that also use
17 the 911 Hz Tone?

18 A Not that I'm aware of.

19 Q So Motorola currently manufactures 911 Hz Tone
20 products, is that right?

21 A Correct.

22 Q And I would like now to talk about the overall
23 organization of Motorola and how the GEMS organization fits
24 within Motorola.

25 Is it one of a number of business units within

1 Motorola?

2 A The GEMS organization is one of, I believe, four
3 -- is it four now -- four organizations.

4 Q What are the -- I'm sorry?

5 A Mobile Devices, Connected Home, the GEMS
6 organization, and -- are we down to three now? We might be
7 down to three. We've had some reorganizations.

8 Q Was the GEMS organization in place as far back as
9 1991?

10 A The GEMS organization itself, under different
11 names. We have, to my knowledge, added and removed business
12 elements within the organization, but the organization
13 itself has been there since 1991.

14 Q What are the prior names of the organization?

15 A CGISS, C-G-I-S-S. Before that, it was LMPS;
16 before that, it was Land Mobile. I believe it was Land
17 Mobile during the time of 1991, or it could have been the
18 Communications Group -- Communications Sector. I'm not sure
19 if that was before 1991 or not.

20 Q And has your position within Motorola always been
21 within the GEMS organization or a prior -- a predecessor?

22 A Yes, I have worked throughout -- throughout my
23 tenure within this organization.

24 Q Going back through the prior history of the GEMS
25 organization, I want to ask you the same question I've asked

1 -- that we have now established, that is, no products
2 produced by other organizations within Motorola used the 911
3 Hz Tone. Was the same true for -- when the GEMS
4 organization was constituted as CGISS?

5 MR. WILLIAMS: Objection, that's vague and
6 ambiguous, and a compound question.

7 A Can you clarify -- can you give a little clarity
8 to that?

9 BY MR. STEWART:

10 Q You've testified that no products created by
11 Motorola outside the GEMS organization incorporate the 911
12 Hz Tone, is that correct?

13 A Correct.

14 Q And that's as a current matter, correct?

15 A That is a current organization.

16 Q Was the same true with respect to the CGISS
17 organization?

18 A Yes. There was no -- CGISS was the producer of
19 911 Hz Tone products.

20 Q Was the same true with respect to the LMPS
21 organization?

22 A Yes. There was no 911 Hz Tone products.

23 Q And was the same true with the Land Mobile Group?

24 A It is hard for me to answer that, in that it was
25 before my time.

1 Q If you needed to find out the answer to that
2 question with respect to Land Mobile, how would you go about
3 finding the answer?

4 A For that specific -- for absolute validation,
5 somebody involved with that at the time would be Mitch
6 ~~Leshin~~
~~Leshin~~.

7 In a conversation he and I have had, I am -- with
8 that as a premise, I am unaware of any products during that
9 time that had the 911 Hz Tone outside of the Land Mobile.

10 Q Okay. Who is currently the head of the GEMS
11 organization?

12 A The business president is Greg Brown.

13 Q Greg --

14 A Greg Brown.

15 Q Brown. And I would like you to give me the
16 predecessor heads of these organizations if you know that.

17 A Okay. Before him was Bob Barnett. Bob Barnett
18 was there for a while.

19 I couldn't clearly give you additional presidents
20 of the sector. We were part of the CE sector -- or CE
21 umbrella, so that -- what was his name, he came to visit us.
22 I can't go beyond that.

23 That goes back to about 1997 or somewhere in
24 there. That's as far as I can recall names.

25 Q Do you know who the head of the Land Mobile

1 A The GEMS organization was created nine months
2 ago, the label, and when it was associated with that
3 acronym.

4 Q When was -- when did CGISS come into effect?

5 A CGISS was instantiated, to the best of my
6 knowledge, in the end -- in the mid point of 2000.

7 Q Now, does the GEMS organization support itself
8 with -- in effect -- internal resources for marketing,
9 sales, distribution?

10 A To the best of my knowledge -- can you define
11 internal, internal to --

12 Q Let me start over and ask you to tell me. How is
13 the GEMS organization itself structured internally?

14 A We have a business unit, and we have an
15 engineering unit and we have manufacturing units.

16 Q And you are within the business unit?

17 A Yes, I am.

18 Q And what operations are encompassed by the
19 business unit?

20 A The business unit includes the -- the external
21 sales force, our direct sales force who interact with
22 customers. The business unit does the accounting, the
23 financial management of the sales force, sales.

24 There is a marketing communication organization;
25 there is a products definition marketing organization; and

1 that's kind of -- that seems to be the full scope of the
2 groups.

3 Q What does the -- what responsibilities fall
4 within the marketing communications organization?

5 A They are responsible for traditional
6 communication messages, documentation associated with
7 products.

8 They are responsible for managements of
9 promotional and advertising events, and advertising
10 documentation ads or -- items that appear, say, in a
11 magazine or something, prints, in addition to customer
12 interaction, promotions; in addition to management of trade
13 show opportunities; in addition to supplies, whether it be
14 material supplies or whether it be sponsoring events to help
15 support the sales force interact with the customers.

16 Q How about broadcast advertising?

17 A Yes, any type of advertising that is associated
18 with the GEMS organization, they would either -- my
19 understanding is they are responsible for that. Whether it
20 is internal or whether they have external firms, I'm
21 unaware.

22 When we require communication messages, this is
23 the organization that has responsibility.

24 Q What about competitive intelligence?

25 A Intelligence is handled within the business

1 units, not necessarily in the marketing communication
2 organization.

3 Q How about brand management?

4 A Brand management is handled in two methods that
5 I'm aware of, one being a consistent advertising
6 presentation scheme of materials, and, then, a second in how
7 we manage our portfolio from the business side, such that we
8 keep a consistent message out with our products -- or a
9 definition of our products.

10 Q Are you within one of these four organizations
11 within the business unit?

12 A I'm within the product portfolio planning -- I'm
13 not sure what term I used.

14 Q Product definition marketing organization?

15 A Yes.

16 Q Is there a separate head of the business unit as
17 opposed to the heads of these four individual operations?

18 A Jim ~~Surello~~ ^{Sarallo} (phon.sp.) is the head of our North
19 American Business Operations.

20 There is -- there are people who are in
21 International Operations as far as business heads also.

22 Q And who is the head of the Marketing
23 Communications Organization?

24 A Mary ~~Botie~~ ^{Bottie}, ~~B-o-t-t-i-e~~. There might be two O's.

25 Q And who is the head of the Product Definition

1 Marketing Organization?

2 A For -- this becomes -- if we have a head for the
3 subscribers, we have a head for infrastructure. The head
4 for the subscriber is dualled. I believe it's Craig
5 ~~Jenisek~~ ^{Chenicek} (phon.sp.) for the indirect market, and he might also
6 be the business -- I'm not quite sure how they are organized
7 at this time.

8 In the direct sales line of products, it's ~~Curt~~ ^{Kurt}
9 Brasch, B-r-a-s-c-h or a-u-s-c-h.

10 Q And how about on the infrastructure side?

11 A There is -- I believe the gentleman's name is
12 Randy Helm from a product planning type perspective. I'm
13 not a hundred percent sure. We've had some reorgs around
14 there also.

15 Q What does the product definition marketing
16 organization do?

17 A We try to capture the needs of the user and,
18 then, transfer that into a product definition and, then,
19 insure that that product fits within the portfolio of
20 products we want to offer and the set of customers we wish
21 to appeal to.

22 Q Do you do this through research?

23 A We do this in several ways. One is research, one
24 is just insuring that the current product is well replaced
25 as far as a feature sets.

1 Then it's pretty much the two major ways; the
2 research itself could be involving interaction with
3 customers, our own internal understanding of things. It's
4 different approaches.

5 Q Have you ever -- or has this organization --
6 sorry -- ever done research on the 911 Hz Tone itself?

7 A Specific to the 911 Hz Tone, I am unaware of any
8 research focused directly at that tone.

9 Q Are you aware of any research results that are
10 related directly to the 911 Hz Tone?

11 A No research results. We have heard customer
12 feedback in interviews. I am not aware if it's tangible
13 documentation as far as notes taken and recorded, though.

14 Q What's the nature of that customer feedback?

15 A Training and understanding how the product works.
16 If they are to replace a product, they need to know that the
17 user is able to understand how to use and feels comfortable
18 with it, and understands that they know it.

19 Q And how did that customer feedback relate
20 directly to the 911 Hz Tone?

21 A We have, consistent with our tones, over the life
22 of the products, specifically for -- the internal term we
23 use is "Hands on, eyes off".

24 Customers, without focusing on the products,
25 understand what's happening, understand when the ~~micro~~ ^{microphone} is

1 active. They are told in a consistent manner, and if they
2 are using a Motorola product, there is an understanding that
3 we -- that we have been consistent such that if they replace
4 that Motorola product with another Motorola product,
5 training of certain aspects of the radio are at a minimum or
6 not even required.

7 Q Because they can use it in the same way as they
8 have used prior products?

9 A They are able to -- they are very attuned to
10 particular sounds, and it allows them to understand what's
11 happening without them interacting.

12 So we have been consistent, and they are familiar
13 enough with our products to know that tone means they can
14 now talk.

15 Q Have you in the course of this product definition
16 marketing organization's activities -- have you or others
17 within the organization looked at competitors' products that
18 are within the same product sector?

19 A We have -- we have reviewed competitors' products
20 from a feature standpoint, aspects to how a bid is written
21 or a request for proposal or request for bid, and we also
22 analyze the products overall -- alterability, robustness;
23 items that are very key to the customer, especially when
24 they want a long lasting product, so key focus points we
25 have on the durability, things like that.

1 MR. WILLIAMS: Are you ready for a short break?

2 A Yeah, I can use a little restroom break.

3 MR. STEWART: Great.

4 THE VIDEOGRAPHER: This is the Videographer. The
5 time is 11:25 a.m. We are going off the record.

6 (Whereupon, a short recess was
7 taken.)

8 THE VIDEOGRAPHER: We are back on the record. This
9 is the Videographer. The time is 11:40 a.m.

10 BY MR. STEWART:

11 Q Is there a standard nomenclature within Motorola
12 for identifying the function of the 911 Hz Tone and other
13 tones generated by your products?

14 A Can you clarify.

15 Q You used some verbiage which I didn't write down
16 before to identify what it is that the 911 Hz Tone signifies
17 to a user of one of your radios, is that right?

18 A Correct.

19 Q Could you repeat that language. I will write it
20 down this time.

21 A The 911 Hz Tone signifies the microphone --
22 either the channels available for communication or that the
23 microphone is active and transmitting.

24 So it allows the user to understand that. In
25 addition, they know that when they hear that tone, that tone

1 is coming from a Motorola product.

2 Q Just a second on that. How do they know that
3 it's coming from a Motorola product?

4 A There is a variety of ways. Motorola trains end
5 users specifically in the tone; tones mentioned in end user
6 documentation manuals, user guides.

7 The tone is heard at trade shows and in other
8 events. Motorola provides a system that is at a trade show
9 and be able to show the radio is communicating on the
10 infrastructure, and that tone is audible there.

11 There is many -- many times, the sales folks will
12 visit a customer and bring new products, and they can
13 configure their products such that they can operate on the
14 system and, then, they can show the customer the new
15 products, and that -- and that tone, that audible tone is
16 heard during the transmission attempts.

17 Q And is that all?

18 A Let me think. Manual, training, trade shows.
19 There is -- to the best of my knowledge, I believe that's --
20 that's my understanding of the association.

21 And in addition to the -- you know -- the
22 Motorola products themselves make the tone; the emblem or
23 the embossed label, the product is there.

24 As a matter of fact, we go through effort to make
25 sure it can't be worn away. It appears multiple times on

1 the product such that when you hear that tone, you are
2 presented with the Motorola label, the trademarks, the
3 bat wing emblem, things like that.

4 So it's been that way for a while. So the
5 repetition of the products, the repetition of the training,
6 the consistencies are kind of the -- of that linkage.

7 Q Is that all?

8 A To what I can recall right now, yes.

9 Q If you recall anything further, please let me
10 know.

11 A Okay.

12 Q You said that customers know it's from a Motorola
13 product. And you listed these as ways in which a customer
14 might know that.

15 Do you have any direct evidence that customers do
16 know that the tone is emanated -- that the tone is a
17 Motorola tone?

18 A I have no research statements that says that's
19 fact. It's -- I don't have any research that gives that
20 fact.

21 Q Do you have any other evidence that would
22 demonstrate that a customer actually knows that this tone is
23 a Motorola tone?

24 A From my own personal job related experience,
25 explicitly it's been interaction with customers who do not

1 refer to it as their radio, but refer to it as their
2 Motorola radio and, you know, the use of it -- when talking
3 with them, you know, statements about what sounds it makes,
4 was it explicit to a 911 tone? No, it was with reference to
5 the tones that it makes.

6 Q Are you aware whether any other -- whether any
7 product manufactured by any other manufacturer emits the
8 same tone?

9 A Define "manufactured".

10 Q I'm stumped. Well, are you trying to distinguish
11 between manufacturing and assembling, or what?

12 A Integrators --

13 Q Integrators?

14 A We have integrators.

15 Q Who buy Motorola manufactured devices and then
16 sell them as part of a system, is that what you are talking
17 about?

18 A Integrators that would purchase a Motorola radio
19 with -- you know -- with our understanding that they would
20 be placing it in either their product or a helicopter or
21 something like that.

22 Q In those situations, is the radio branded as a
23 Motorola radio, or by the integrator?

24 A I am not sure in all cases. For a particular
25 case, it is branded as their products on the face of the

1 products -- an E. F. Johnson portable radio, mobile radio.

2 Q Beyond that, that kind of situation, are you
3 aware of other manufacturers who produce products that emit
4 a 911 Hz Tone?

5 A No, I'm not aware of any other.

6 Q Have you ever attempted to determine whether
7 there was any such product?

8 A I myself have not actively sought to investigate
9 that occurrence. I personally have not.

10 I am not aware -- to the best of my knowledge,
11 I'm not aware if other people have actively investigated
12 that.

13 Q Who would you ask if you wanted to find out
14 whether Motorola -- anyone within Motorola had sought to
15 determine that fact?

16 A I'm not a hundred percent sure. I would probably
17 ask members -- or people who are involved with our
18 Competitive Information Group.

19 Q Who are they?

20 A I specifically interface with Andres LaCambras.
21 I can't spell that.

22 Q And he's within GEMS?

23 A Yes, he is.

24 Q By the way, GEMS is an acronym, is that correct?

25 A Yes it is.

1 Q What's it stands for?

2 A Government and Enterprise Mobile -- I think it's
3 Mobile Solutions.

4 Q Okay. Fair enough. Which of the four
5 organizations -- I'm sorry, let me start over.

6 The Competitive Information Group, is that within
7 a business unit of GEMS?

8 A It is handled within the business unit of GEMS.

9 Q And what organization within the business unit?

10 A I'm not a hundred percent sure. There are --
11 there is different people who help on different things.

12 Q Okay. Going back to my first question, the
13 function that is represented by the 911 Hz Tone as used in
14 the Motorola products is that the channel is available for
15 communication or the microphone is active and transmitting,
16 is that right?

17 A Correct.

18 Q Is there a short version of that that you use to
19 describe that function in your devices?

20 A The training manuals and the user guide speak to
21 it in two different ways, depending upon the group that
22 these manuals are designed for.

23 One refers to it as the Talk-^{Permit}~~Permits~~ tone, and
24 one of it refers to as the Call-Back tone.

25 Q What's the difference between those two?

1 A The Talk-Permit tone says that you pressed the
2 PTT button, the push-to-talk button, and the channel is
3 available, and the microphone is enabled or active for a
4 Talk-Permit tone to occur.

5 So once the radio is in that state of Talk-Permit
6 tone, the radio plays the Talk-Permit tone or gives the
7 Talk-Permit tone.

8 Q Now, do these 911 Hz Tone products -- those are
9 the two-way radios we have been talking about --

10 A Okay --

11 Q Also emit other tones?

12 A Yes, they do.

13 Q How many?

14 A Somewhere in the range of nine to 12 different
15 tones.

16 Q And what are the functions that these other tones
17 serve?

18 A They range from -- there is no -- there is no
19 channel available during communication, so it's a -- it's a
20 Talk-Prohibit tone, to items like low battery.

21 Q And do you engage in the same effort to make sure
22 that successive generations of two-way radio products use
23 the same tones for consistent functional references?

24 A Yes, we do.

25 Q And so these other tones have also been kept

1 consistent over years of two-way radio products?

2 A Yes, they have.

3 Q Was the 911 Hz Tone itself originally created by
4 Motorola?

5 A To the best of my knowledge, yes, it was.

6 Q When?

7 A To the best of my knowledge, it was developed
8 during the 1983-1984 product developments efforts.

9 Q What product development effort was that?

10 A It was for the MTX 300T.

11 Q What kind of product was that?

12 A It was -- it was the trunking -- or, you know, it
13 was a radio that worked on one of the initial Motorola
14 infrastructure systems.

15 Q Had there been prior products produced by
16 Motorola that served that same function?

17 A Not to my knowledge. When you say "same
18 function", give me a little bit of clarity.

19 My response was not a trunking based product. I
20 wasn't quite sure if that's what you were referring to.

21 Q Okay. So that was the first trunking based
22 two-way radio product produced by Motorola?

23 A That I'm aware of.

24 Q And how was the 911 Hz Tone created?

25 MR. WILLIAMS: Objection, that's vague.

1 A A little bit of clarity, please.

2 BY MR. STEWART:

3 Q Who created the tone?

4 A The tone was developed between the business --
5 the business people at the time and the engineering staff
6 that was developing the tone.

7 Q Who were the business people involved?

8 A I do not -- I do not know.

9 Q Have you attempted to find out who they were?

10 A I did attempt. I do not have any information to
11 that point.

12 Q How did you -- what were your attempts?

13 A My attempt was speaking with Marlon Moo-Young.

14 Q Why did you ask him?

15 A Marlon supports our field products, and the hope
16 was he potentially had some of the legacy product
17 documentation available.

18 Q Is that documentation that would have identified
19 who the individuals were who developed the tone?

20 A That was the hope.

21 Q Did he have such documents?

22 A No, we did not.

23 Q Did he have any personal recollection of the
24 facts that you were looking for?

25 A He had knowledge of the tone itself in

1 relationship to the MTX 300T.

2 Q What was the basis of that information? I'm
3 sorry, had he worked on that product?

4 A I do not know.

5 Q What did he tell you about the use of the tone in
6 relation to the MTX 300T?

7 A That it was the first product to carry it, and it
8 was ~~it was not~~ MTX 300T came out and, then, it was a
9 follow-on update to it, if you would, carried the tone, and
10 that was the initiation of the tone itself as far as
11 availability.

12 Q Do you know who the engineering people were who
13 were involved in the development of the tone?

14 A No, I do not.

15 Q Did you seek to find out who they were?

16 A Yes, I did.

17 Q How did you do that?

18 A I went to speak with Marlon.

19 Q Did he refer you to anyone else as a possible
20 source for this information?

21 A He was unsure of who would have had that specific
22 information on the MTX 300T.

23 Q Did he suggest any names?

24 A He suggested Rick Lehman.

25 Q Who is that?

1 A Rick Lehman was the -- was the release manager
2 for the products, the release manager being defined as the
3 person who insured what the date was for the product's
4 release, and that the product met all goals to be released.

5 Q And did you talk with Rick Lehman?

6 A I did not.

7 Q Did you seek to talk to Rick Lehman?

8 A I did.

9 Q And what happened?

10 A He was unavailable every time I went to speak
11 with him.

12 Q Did you try to track this information down
13 through anyone else?

14 A I did.

15 Q Who was that?

16 A I seeked out -- or sought out, I should say,
17 Mitch ^{Leshin}~~Leshin~~. He was not able to shed any light on the
18 particulars of the MTX 300T.

19 Q Is Rick Lehman still with Motorola?

20 A Yes, he is.

21 Q What's's his position?

22 A He is a quality manager.

23 Q Within GEMS?

24 A Yes, he is.

25 Q Is he within the engineering?

1 A Yes, he is.

2 Q Okay. One further question. You talked about
3 the integrators' use of the Motorola manufactured mobile
4 radios with -- you used the example, E. F. Johnson branding
5 on the radio itself, is that right?

6 A Correct.

7 Q And do you know whether that radio emits the
8 911 Hz Tone?

9 A I do believe it emits the tone. I do believe --
10 I have not heard the tone, but I do believe it emits the
11 tone.

12 Q Are there other integrators who operate in the
13 same fashion?

14 A I do not have direct understanding of how other
15 integrators operate. They purchase material from Motorola.
16 That's the extent of my knowledge of other integrators.

17 Q Do you know whether Motorola has a license
18 agreement with E. F. Johnson for the use of the 911 Hz Tone?

19 MR. WILLIAMS: Objection. That calls for a legal
20 conclusion. This witness is a fact witness.

21 BY MR. STEWART:

22 Q You may answer.

23 A I don't know.

24 Q Do you know whether Motorola has any license
25 agreements with anyone for the use of the 911 Hz Tone?

1 MR. WILLIAMS: Same objection. That calls for a
2 legal conclusion. This is a fact witness.

3 A Again, I do not know.

4 BY MR. STEWART:

5 Q Did you try to ascertain whether Motorola had
6 such license agreements?

7 A I did.

8 Q How did you do that?

9 A By speaking with Mary ^{Pitman}~~Pitman~~.

10 Q And what did you learn from Mary ^{Pitman}~~Pitman~~?

11 A Quite honestly, nothing.

12 Q What did she say about whether Motorola had
13 license agreements in place for the use of the 911 Hz Tone?

14 MR. WILLIAMS: I'm going to object and instruct you
15 not to answer to the extent this involved communications
16 with lawyers.

17 A I can't answer.

18 BY MR. STEWART:

19 Q Is Mary Pitman a lawyer?

20 A I don't know.

21 MR. STEWART: Counsel, will you allow the witness to
22 answer this question?

23 MR. WILLIAMS: You can answer the question to the
24 extent that it doesn't involve communications between
25 yourself and the lawyers.

1 A Actually, I was being honest. I really don't
2 know. I do not believe she is, but I do not know.

3 BY MR. STEWART:

4 Q I'm going to ask you then to answer my question
5 specifically, did Mary ^{Pitman}~~Pitman~~ tell you -- what did Mary
6 ^{Pitman}~~Pitman~~ tell you with respect to whether Motorola had license
7 agreements in place for the use of 911 Hz Tone?

8 A There was -- there was work that needed to be
9 looked at. I mean, there was no answer.

10 Q Was she -- is she still working on developing
11 that answer?

12 A I am not sure. I haven't seen any
13 correspondence, but I have not been on my computer or
14 anything, so I do not know.

15 Q And you exchanged e-mails with Mary ^{Pitman}~~Pitman~~ on
16 this subject?

17 A Yes.

18 MR. STEWART: I would ask for the production of
19 those e-mails.

20 MR. WILLIAMS: We will take that under advisement.

21 BY MR. STEWART:

22 Q Do you know whether the 911 Hz Tone in its
23 current configuration existed somewhere prior to the
24 development of the MTX 300T product?

25 A Not that I'm aware of.

1 Q Is it your belief that someone within Motorola
2 created it for the first time?

3 A Yes, that is my belief.

4 Q On what do you base that belief on?

5 A I base -- I base that belief on conversations
6 with Marlon Moo-Young and with Mitch ^{Leshin} Leshin.

7 Q And what did they tell you that led you to that
8 belief?

9 A The creation of the tone itself has roots in the
10 time aspects, when they were originally defining the
11 trunking protocol. These time aspects were specific -- or
12 were not known or stipulated before that effort.

13 Q Explain that a bit further, if you would. What
14 time aspects are you referring to?

15 A The first radio was designed such that it would
16 operate on a -- on this trunking protocol, a particular
17 language used, communicates. There is expectations that
18 information will be transmitted in a certain period of time
19 .

20 These tones are based upon -- my understanding --
21 a selection of certain groupings of these time periods in
22 association with a particular selection of a pitch such that
23 ^{aesthetic} an ~~esthetic~~ tone was created.

24 Q First, with respect to the time periods, are you
25 referring to the duration of the entire time or the cadence

1 of the tone?

2 A The cadence.

3 Q And in what way is the cadence related -- I'm
4 sorry, is the cadence then related technically to the
5 transmission speed of the trunking protocol that was being
6 put in place?

7 A Not technically. There is some relationship, but
8 it's not technically related to.

9 Q In what way is it related?

10 A The radio was producing -- was producing events
11 every 23 and a third milliseconds. They used that event and
12 multiples of that ~~events~~^{event} to create their cadence.

13 Q I see. Is there any significance to the duration
14 of the tone in its entirety?

15 A No.

16 Q Is there any significance to the number of sounds
17 within the tone in its entirety?

18 A No.

19 Q Was the 911 Hz Tone ever produced at a different
20 frequency?

21 A Can you clarify.

22 Q Was it ever a 900 Hz Tone?

23 A To the best of my knowledge, it has been anywhere
24 between 909.9999 and 911 based upon just ~~Aaron~~^{error in} creating a
25 frequency, but indistinguishable to the ear of the tone.

1 So the tone audibly has always come across as 911
2 or -- at that particular frequency pitch.

3 Q Was there any reason to select that range, 910 to
4 911, as opposed to another frequency range for this tone?

5 A It is my understanding that the frequency
6 generator originally used in the MTX 300T was such that it
7 could generate a frequency of 150, and they selected a
8 six-times multiplier of that because of the ^{aesthetic}~~esthetic~~ness of
9 the tone.

10 Q How did you learn this information?

11 A This was again speaking with Marlon and with
12 Mitch Leshim.

13 Q So why -- if the frequency generated 150 hertz,
14 911 is not a six-times multiplier of 150.

15 A There is error to the -- to the item, and that's
16 how it -- it's my understanding that's how they got to that
17 frequency point.

18 Q So is it -- was it designed to be 900 Hz, is that
19 what you are saying?

20 A No, it was -- it was designed to be -- the
21 frequency generator is not explicitly 150. It's 150 point
22 something such that when it multiplies out, it starts
23 getting higher.

24 It was an understood tool of the time so they
25 were able to identify what the frequency was going to be.

1 MR. STEWART: Okay. I would like to have marked as
2 Klein Exhibit 3 a user manual.

3 (Klein Deposition Exhibit
4 No. 3 was marked as
5 requested.)

6 MR. STEWART:

7 Q You are now looking at that document, Mr. Klein.
8 Do you see that document?

9 A Yes, sir.

10 Q Is it a user manual?

11 A To the best of my -- my ability to read it, yes,
12 it is.

13 Q Okay. And on the page marked MOT 000315 there is
14 a copyright notice with the dates 1990, 1991; do you see
15 that?

16 A Yes, I do.

17 Q Is that roughly the time, if you know, that the
18 STX 800/821 Smartnet products were being sold?

19 A To the best of my knowledge, yes.

20 Q And could you turn to Page 13 of the manual --
21 it's page MOT 000321.

22 A I'm there.

23 Q And this provides a list of audible tones on the
24 right-hand side, correct?

25 A Correct.

1 Q Now, the third one is called the Call Back. Is
2 that the 911 Hz Tone?

3 A Correct, it is.

4 Q And it's described as, "Three short, high pitched
5 di-di-dit, indicate channel availability". Do you see that?

6 A Yes, I do.

7 Q And if you turn over to the next page on the
8 left-hand side, Page 14 of the manual, there is a Talk
9 Permit listing that says "Same as call back"?

10 A Correct.

11 Q Now, -- and that's the 911 Hz Tone as well?

12 A Correct.

13 Q Now, there is no reference to 911 Hz in this
14 document, is that right?

15 A I have not fully reviewed the document, but it's
16 my assumption that it is referenced as the Talk Permit or
17 the Call Back tone.

18 Q And these two tones are in a list of other
19 audible tones.

20 A Yes.

21 Q And it looks to me like there are 23 of them in
22 all.

23 A Correct.

24 Q Okay. And are all those tones different from
25 each other?

1 A It is my understanding, based upon interaction
2 with user guides, that if the tone is the same, it would
3 stipulate that it is the same between the indications of
4 what the tone means.

5 Q Okay. As it does with Talk Permit?

6 A Yes.

7 Q Okay. If you look below Call Back on 321, there
8 is Clear Mode Transmit is the next one in alphabetical order
9 and that's described as a high pitched beep, do you
10 see that?

11 A Yes, I do.

12 Q Now is that beep also at 911 Hz?

13 A I cannot answer that question. I have not spent
14 time investigating that particular tone.

15 Q Are any of the other tones emitted by this radio
16 -- for these purposes -- emitted at the frequency of 911 Hz?

17 A I cannot answer the question. I am not -- I've
18 not researched these tones enough to verify the exact
19 frequency they operate on.

20 Q Were all of the tones emitted by the first
21 product in this line, the 300T, multiples of 150 hertz?

22 A It is my understanding from discussions that they
23 were multiples of 150 Hz -- or ^{150 point-whatever Hz} ~~150 points, whatever Hz.~~

24 Q 150 plus or minus?

25 A Correct.

1 Q Do you know -- so that presents a somewhat
2 limited number of potential frequencies at which tones could
3 be generated, correct?

4 A I believe multiples of 150 Hz.

5 Q Do you know whether any of the other tones in
6 that radio were at 911 Hz?

7 A Again, I would have to go back and investigate
8 that particular -- if those tones are consistent, they
9 should be the same as -- the tones that were in existence in
10 that product should be consistent with the tones that are
11 described here in this product.

12 Q Because of your intention to make sure that there
13 was consistent use across successive products?

14 A Correct.

15 Q And the STX 800 is a successor to the MTX 300T?

16 A Correct, it is.

17 Q Have you looked -- have you looked at any of the
18 other tones emitted by these 911 Hz Tone products in terms
19 of analyzing their frequency and cadence and the like?

20 MR. WILLIAMS: Objection, that's vague.

21 A I have not investigated these tones in reference
22 to 911 -- the 911 Hz Tone.

23 BY MR. STEWART:

24 Q Have you investigated what frequency the other
25 tones are emitted at?

1 A No, I have not. I have not investigated the
2 other frequencies these tones are emitted at.

3 Q Does the fact that the -- that the first four
4 tones there or maybe five tones are identified as
5 "high-pitched" suggest that they are all the same frequency?

6 MR. WILLIAMS: Objection, that's vague.

7 BY MR. STEWART:

8 Q Are you able to answer that question. I'm sorry,
9 I meant to ask you to go ahead and answer.

10 A It would be presumptuous for me to identify what
11 intention or what perception a radio would have.

12 Q Do you know from your actual use of these -- or
13 experience with these 911 Hz -- I'm sorry.

14 You have actually used 911 Hz Tone product
15 radios, have you not?

16 A Yes, I have.

17 Q Are you familiar based on that experience with
18 whether more than the Call Back tone is emitted at 911 Hz?

19 A I cannot say whether more than the Call Back and
20 Tone Permit tone are at 911 Hz. They are the most often
21 heard tones that I have in interacting.

22 Q Do they -- just in terms of frequency alone, do
23 other tones sound like the same frequency as the Call Back
24 tone?

25 A It's difficult to answer because of the different

1 cadences of the tones.

2 Q You can't distinguish between the cadence and the
3 frequency of a tone?

4 A No, the tones are of X -- frequency X pitch. A
5 majority of the time, I'm not utilizing the features that
6 interact with other of these tones, or I am just
7 particularly not paying attention when they come in such
8 that I would be monitoring whether they are the same tones.

9 Q Is it possible that multiple tones use the same
10 frequency on these products?

11 MR. WILLIAMS: Objection, vague.

12 A I do not know.

13 MR. STEWART: Next I would like to have marked as
14 Klein Exhibit 4 another user manual.

15 (Klein Deposition Exhibit
16 No. 4 was marked as
17 requested.)

18 BY MR. STEWART:

19 Q If you would turn first to the page marked
20 000269. On the left-hand side, there, page eight of the
21 manual, there is the Talk Permit and the Call Permit -- I'm
22 sorry -- Call Back alert tones there as well, do you see
23 that?

24 A Yes, I do.

25 Q And is that the 911 Hz Tone that we are talking

1 about here?

2 A The Talk-Permit tone?

3 Q Yes.

4 A Yes.

5 Q And Call Back also?

6 A Yes.

7 Q And it is described slightly differently from the
8 previous manual that we looked at, do you see that?

9 A It is -- it is "Dih-dih-dit". The description
10 specifically -- I need some clarification on the exact --

11 Q It's slightly different, don't you think?

12 A The description of the tone?

13 Q Yes.

14 A There is. There is a greater amount of verbiage
15 on the second.

16 Q And the second one is the MTX 800. Do you know
17 where that fits in terms of time? There is not a copyright
18 date on this one -- vis-a-vis the STX 800?

19 A It is my recollection that the MTX 800 was the
20 follow-on to the STX products.

21 Q Okay. And over on the page 000271 --

22 A Excuse me, which page?

23 Q 000271, a couple of pages later, under -- in the
24 upper left-hand side of the page, "Making Dispatch Calls",
25 that is a description, is it not, of the generation of the

1 911 Hz Tone that we have been talking about?

2 A Yes, it is.

3 MR. STEWART: Okay. Now, one more user manual. I
4 would like to mark this as Klein Exhibit 5.

5 (Klein Deposition Exhibit
6 No. 5 was marked as
7 requested.)

8 MR. STEWART:

9 Q Now, this has a copyright date on the second page
10 -- no, where is it.

11 MR. WILLIAMS: I think you gave me something extra
12 here. This isn't part of 5.

13 MR. STEWART: Thank you.

14 A What page are you on?

15 BY MR. STEWART:

16 Q It actually on 2207. There is a 2003 copyright
17 date.

18 A 2207?

19 Q Right.

20 A There is a 2003 copyright, correct.

21 Q Now, is this a current product?

22 A This is a currently shipping product.

23 Q Do you know whether this is the current user
24 guide for this product?

25 A This is the current user guide, to the best of my

1 knowledge, specific to the Project 25 version of this
2 product.

3 Q And what is Project 25?

4 A It is a -- the open -- it's an organization that
5 has helped to define the APCO communication standard that we
6 have branded as Astro for our features and functions that
7 support that standard.

8 Q And that standard is an interoperability
9 standard, is that right?

10 A It is an open protocol, so it does create
11 interoperability.

12 Q Now, if you turn to 2215, which is page six of
13 the guide, you see here we have the list of tones again?

14 A Correct.

15 Q This one is different because it is -- the tones
16 are grouped together with -- under a "Sound" description, do
17 you see that?

18 A Yes, I do.

19 Q If you turn over to the page labeled 2217 which
20 is page eight of the user guide --

21 A Correct.

22 Q Do you see under "Sound" it says, "A Group of
23 Medium-pitched Tones", do you see that?

24 A Yes, I do.

25 Q And Talk Permit is one of those tones?

1 A Yes, it is.

2 Q Now, does that mean that the -- that the
3 frequency of the tone was changed in this product?

4 A No, it was not.

5 Q But it's described as medium-pitched as opposed
6 to high-pitched here?

7 A Yes, it is.

8 Q Do you know why that is?

9 A It's my understanding -- and this is strictly
10 based upon personal experience in helping to work on these
11 manuals -- that there was an attempt to help organize these
12 tones so that it was easier to reference.

13 Q And they were thus grouped by -- I guess for this
14 purpose, it's the pitch or frequency, right, the group of
15 medium-pitched tones, is that right?

16 A And a majority of these tones are grouped in that
17 manner.

18 Q And for the group of medium-pitched tones that
19 includes the Talk-Permit tone, do you know whether all of
20 those tones used the same frequency?

21 A I cannot at this point say.

22 Q You are presenting this to a user as a group of
23 tones that are related in terms of their pitch, is that
24 right?

25 A Yes, we are.

1 Q But you don't know whether the pitch is actually
2 the same?

3 A I do not to for sure. I would have to
4 investigate.

5 Q If the pitch were the same, what would be the
6 basis on which to distinguish from among these tones?

7 A My assumption, purely my assumption, would be
8 cadence and length, over all length of tones.

9 Q And there is no indication of cadence and length
10 for this group of tones, right?

11 A No, there is not, not that I see. I do not know
12 if there is additional information, and I have not fully
13 reviewed this document.

14 Q Do you want to take a minute to flip through that
15 and see if you find anything else?

16 A Yes.

17 Q Where are you looking?

18 A On page -- I selected Dispatcher-Interrupt on
19 page 44, MOT 002253. "Dispatcher-Interrupt: The
20 Dispatcher-Interrupt feature allows the dispatcher to
21 interrupt your radio and place you in a private conversation
22 call with a dispatcher.

23 "When you receive -- when your radio receives a
24 Dispatcher-Interrupt call, you hear a repeating sequence of
25 four, short medium-pitched tones until you answer the call".

1 That is different than the description for the
2 Talk Permits.

3 Q Okay.

4 MR. STEWART: This would be a good place for me to
5 break for lunch if you are ready to do that.

6 MR. WILLIAMS: That's fine.

7 THE VIDEOGRAPHER: This is the Videographer. The
8 time is 12:30 p.m. We are going off the record.

9 (Whereupon, at 12:30 p.m., the
10 deposition was recessed, to
11 reconvene at 1:30 p.m., this
12 same day.)
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AFTERNOON SESSION

(1:38 p.m.)

THE VIDEOGRAPHER: We are going back on the record. This marks the beginning of videotape Number Two, Volume One, in the deposition of David Klein. The time is 1:38 p.m.

DAVID ERIC KLEIN,
the witness at the time of recess, having been previously duly sworn, was further examined and testified as follows:

EXAMINATION(resumed)

BY MR. STEWART:

Q Good afternoon, Mr. Klein. What was the alleged date of first use of the 911 Hz Tone as a mark in commerce according to Motorola?

MR. WILLIAMS: Objection, that calls for a legal conclusion based on Patent and Trademark Office filings. This witness is a fact witness.

BY MR. STEWART:

Q Please answer.

A Can you clarify commerce. I'm not sure of the answer nor do I understand the statement of commerce.

Q It's evident from the face of the trademark application that we have already introduced into the record

1 that Motorola has asserted that the date of first use of the
2 911 Hz Tone as a mark in commerce is May 6, 1991. Are you
3 aware of that?

4 MR. WILLIAMS: Objection. Again, that's a legal
5 conclusion based on Legal Department filings.

6 BY MR. STEWART:

7 Q Are you aware of the date May 6, 1991 as having
8 been asserted to the Patent and Trademark Office, as the
9 date of first use?

10 A I'm aware -- I read that date in one of the
11 documents.

12 Q That's all I'm asking. Good.

13 What happened on that date?

14 A You've got to clarify, if you could, please.

15 Q What about May 6, 1991 led Motorola to assert it
16 as a date of first use of the mark in commerce?

17 MR. WILLIAMS: Objection. Again, this is a question
18 relating to a legal filing in the Patent and Trademark
19 Office.

20 A I'm unaware of the specific events that occurred
21 on that particular date.

22 BY MR. STEWART:

23 Q Have you sought to find out what happened on that
24 particular date?

25 A No, I have not.

1 Q Was there any difference in the 911 Hz products
2 that manifested itself on May 6, 1991?

3 A To the best of my knowledge, the consistency that
4 has occurred with the tones, the 911 Hz, before and after
5 the -- the May 11th, 1991 --

6 Q May 6th.

7 A I'm sorry, May 6th, 1991, those tones were
8 consistent before and after that date.

9 Q Was there any other change in the products in
10 which the 911 Hz Tone was incorporated on or around May 6,
11 1991?

12 A The only product change would be the availability
13 of potentially additional products that utilize the 911 Hz
14 Tone.

15 Q When did that happen?

16 A That's a consistent process as we develop the
17 products. This was -- that was a timeframe where we were
18 developing the MTX, MTS variant of products.

19 Q Particularly in May of 1991, was there any
20 product introduction or any other change in the products
21 themselves?

22 A I do not know of any particular change associated
23 with that specific date. I'm not aware of any.

24 Q Was there a change in May of 1991 in the
25 marketing of 911 Hz Tone products?

1 A I'm unaware of any change or deviation from the
2 consistent marketing of the 911 Hz.

3 MR. STEWART: I would like to have marked as Klein
4 Exhibit 6 a document entitled "911 Hz Tone Information."

5 (Klein Deposition Exhibit
6 No. 6 was marked as
7 requested.)

8 MR. STEWART:

9 Q Have you seen this document before?

10 A I have seen this document before.

11 Q What is it?

12 A It's my understanding that this document
13 stipulates -- stipulates products that used the 911 Hz Tone.

14 Q Who is -- or what is TAG Marketing, T-A-G
15 Marketing?

16 A The America Marketing -- The America Group
17 Marketing.

18 Q And who are they?

19 A It is the marketing group that is specific to
20 North America and Canada.

21 Q The marketing group within Motorola?

22 A I'm sorry, for clarity, it is the GEMS subscriber
23 marketing group, the group that is used for defining the
24 products, subscriber products that work on infrastructure
25 and conventional operation for North America, particularly

1 the direct sales force.

2 Q When you talk about subscriber infrastructure and
3 conventional products for North America, what -- what's
4 meant by the term "subscriber" in that context?

5 A Subscriber is our internal nomenclature to define
6 a hand-held radio or radio that gets installed in a vehicle
7 of that type -- a mobile portable type of device.

8 Q As opposed to?

9 A As opposed to infrastructure which would be an
10 installed tower and such.

11 Q So when did you first see this document?

12 A I did see this in March of this year.

13 Q What were the circumstances?

14 A The circumstances were I helped to collect the
15 information that appeared -- this listing of features -- or
16 excuse me, of products.

17 Q So you directed the TAG Marketing people to
18 collect this information?

19 A I am part of the TAG Marketing team.

20 Q I see. So who actually collected the
21 information?

22 A It was myself on behalf of my manager to collect
23 this information.

24 Q So you produced this document to begin with?

25 A I do not know if I produced this particular

1 variance. This is the information I provided. To the best
2 of my knowledge, it appears to be the information I turned
3 over to my manager.

4 Q Is this the complete document?

5 A It appears to be from what I am aware of -- from
6 my interaction.

7 MR. STEWART: I would like to mark as Klein Exhibit 7
8 a one-page document entitled, "Post-1991 Indirect Radios
9 with 911 Hz Trunking Clear-to-Talk or Talk-Permit Tone".

10 (Klein Deposition Exhibit

11 No. 7 was marked as

12 requested.)

13 BY MR. STEWART:

14 Q Have you seen that document before?

15 A I've not seen this particular document.

16 Q Okay. Going back to 6, who asked for the
17 collection of the information about 911 Hz Tone products?

18 MR. WILLIAMS: Objection, that's vague.

19 BY MR. STEWART:

20 Q I'm sorry. I will rephrase that. Who asked for
21 the information that is presented in Exhibit 6?

22 A This information was requested on behalf of my
23 manager.

24 Q And who is your manager again?

25 A ~~Curt Braesh.~~
Kurt Brasch

1 Q And what was his purpose, if you know, in asking
2 for this information?

3 A He had received requests for this particular
4 information and delegated that responsibility to me.

5 Q From whom did you receive the request?

6 A I do not know.

7 Q Do you have an understanding as to why this
8 information was being collected in March of 2005?

9 A It was my understanding as per a discussion with
10 my manager that this was a request for information for a
11 trademark -- for the 911 Hz Tone.

12 Q For a new trademark application?

13 A I do not know. It was just in reference to a
14 trademark of the 911 Hz Tone.

15 Q Were you aware in March of 2005 that Motorola had
16 filed an application for registration of the 911 Hz Tone as
17 a trademark?

18 A No, I was not aware.

19 Q Now, if you turn to the third page of this
20 document, you see it's headed, "Pre-1991 Radios"?

21 A Correct.

22 Q And then the next page is headed, "Post-1991
23 Direct Radios", do you see that?

24 A Correct.

25 Q What was the reason for distinguishing based on

1 the 1991 date?

2 A The request that I received, to the best of my
3 knowledge -- the best of my recollection is that my manager
4 requested that I find -- identify radios 1991 and later that
5 utilized the 911 Hz Talk-Permit tone, Call-Back tone, versus
6 -- he put that request out for clarity. For clarity, he
7 mentioned that there were pre-1991 products available also,
8 and he said give me a complete list.

9 So I myself identified pre and post based upon
10 the initial request.

11 Q Did you ask him why he had specified 1991 as a
12 demarcation?

13 A Honestly, I did not.

14 Q Do you have an understanding as to why he did?

15 A At the time of the request, I did not.

16 Q Do you now?

17 MR. WILLIAMS: Objection to the extent that your
18 answer would call for privileged communications between
19 yourself and the lawyers.

20 BY MR. STEWART:

21 Q Can you answer the question?

22 MR. WILLIAMS: If it involves discussion with the
23 lawyers, I'm going to ask you to not answer the question.

24 A The only assumption I can make is because the
25 dates showed up in the documents that you have showed me

1 already.

2 BY MR. STEWART:

3 Q What's the significance of the copyright date at
4 the bottom of the first page, it says 2003?

5 A What does not come through, unless you print in
6 color, is the design which is our internal -- I'm sorry, I
7 stand corrected.

8 The -- what does not come through also is color
9 and any formation -- artistic formations, but the copyright
10 I believe is in relationship to Motorola and any -- this is
11 from a template that's used that can carry the Motorola
12 logo, and it was an older template that I had been using.

13 Q I see. Now, if you turn to the second page of
14 Exhibit 6 --

15 A Okay.

16 Q Labeled 002265 -- do you see that?

17 A Yes, I do.

18 Q The second bulleted paragraph labeled
19 "Consumer/cellular Support", do you see that?

20 A Yes, I do.

21 Q What is the significance -- or what's the meaning
22 of that section of this page?

23 A This section was to define the development team
24 that moved from our radio based group to support for our --
25 was at that point referred to Gemini and later to Mirs,

1 M-i-r-s, and then to iDEN. They carry forward a similar
2 need to have a Talk-Permit tone.

3 Q So Mirs and Gemini were the names of teams
4 internal to GEMS?

5 A Yes, they were -- they were nomenclature for just
6 identification of a development team.

7 Q And was iDEN also a -- within GEMS?

8 A At that point, when they became iDEN, they were
9 moved out of the GEMS organization.

10 Q And what time period was that?

11 A To the best of my recollection, and my personal
12 knowledge, I believe the timeframe was around mid 1995.

13 Q And what -- into what division of the company
14 were they moved?

15 A I believe -- I believe the organization is called
16 Networks.

17 Q You had previously identified GEMS mobile
18 devices, connected home --

19 A I was missing the fourth. The fourth is
20 networks.

21 Q Okay, I've got you. And what does it mean --
22 "The iDEN team altered the period"?

23 A They altered the tone, tone being a mix of the
24 actual pitch, the frequency of the tone and also the -- the
25 duration and items that make up the actual sounds.

1 Q And who on iDEN team did that?

2 A I do not know a specific name.

3 Q Who were on the iDEN team? I'm sorry, these are
4 people -- this was a team that moved out of the organization
5 you were joining in 95, is that right?

6 A I joined in 1995. These people had already
7 separated from the development team I was involved with at
8 the period of 1995.

9 Q So how did you come by this information that they
10 altered the period?

11 A I spoke to Marlon Moo-Young who, it is my
12 assumption, had working knowledge of these facts as he was
13 in the Gemini/Mirs/iDEN team at one point.

14 Q And the first product -- I'm sorry, in
15 parenthesis in that first subsection, under the second
16 bullet, it says, parens, "Timeframe for the actual tone",
17 close parens. What did you mean by that?

18 A There was a modification of the frequency, there
19 was a modification of the duration, there was a modification
20 of the cadence of the tone.

21 So there was multiple aspects of the sounds that
22 changed, that made it unique to the 911 Hz Tone.

23 Q Were there technical reasons for altering those
24 aspects of the tone?

25 A I am not aware or I have not discovered any

1 evidence to say one way or the other.

2 Q Do you know whether the network protocols are
3 different between iDEN and the trunk two-way radio protocols
4 used by Motorola?

5 A The network protocols are different between the
6 two, but the products in that timeframe did not require the
7 protocol timings to generate tones.

8 Q We have moved beyond what you described with
9 respect to the MTX 300T, is that right?

10 A Correct.

11 Q Now, the second -- the last line on this page
12 says, "The first product to support this was released in
13 1991". Do you see that?

14 A Yes I do.

15 Q What does that mean?

16 A The first -- in conversations with Marlon
17 Moo-Young, it's my understanding that the first products
18 that actually exhibited this modified tone or sounds was
19 available for at least listening, beta testing or some type
20 of function where the tone could be exhibited in 1991.

21 Q Do you know which of those was available in beta
22 testing?

23 A I do not know at this point. I do not know if
24 based upon conversations what -- what aspects.

25 Q And is it your understanding that that 1991

1 availability of the tone was an availability of the non 911
2 Hz Tone, or an availability of the 911 Hz Tone in iDEN
3 related products?

4 A No, the availability -- the product to support
5 this was released in 1991. That availability was based upon
6 the altered modified version of the sounds.

7 Q Now, were you asked to investigate tones used
8 with respect to iDEN products?

9 MR. WILLIAMS: Objection to the extent that the
10 question calls for communications between yourself and the
11 lawyers.

12 A No, I -- my manager did not request for me to
13 focus on those. He requested the products that I had
14 working knowledge or the ability to have working knowledge
15 of.

16 Q So did this second bulleted item on page two not
17 result from your manager's direct request?

18 A Correct.

19 Q You mentioned before that there were variants of
20 this document, is that correct?

21 A I do not know if it was placed into a larger
22 document or not with my reference to variants of this
23 document.

24 Q Who would have placed it in a larger document?

25 A I did not know if, say, this one that has a very

1 similar formatting was a page of this document or not. I'm
2 only aware of the information that I provided and supplied
3 to my manager.

4 Q And is Exhibit 6 exactly the form in which you
5 provided the information?

6 A From what I can see, to my best understanding, it
7 does appear to be the form which I delivered it.

8 Q Well, why would you have suggested that there
9 would be -- that there may be a larger document of which
10 this form is a part?

11 MR. WILLIAMS: Objection, that mischaracterizes his
12 testimony. He did not say that.

13 A To be clear, I did not know if I was turning over
14 information to be compiled into a larger document.

15 BY MR. STEWART:

16 Q Did your manager tell you anything that indicated
17 that that might be the case?

18 A No.

19 Q Did you ever see another document that included
20 this information?

21 A No.

22 Q To whom was this document distributed?

23 MR. WILLIAMS: Objection, vague.

24 BY MR. STEWART:

25 Q This document, referring to Klein Exhibit 6.

1 A I do not know. I gave this -- submitted this to
2 my manager.

3 Q Did you submit it to anyone else?

4 A No, I did not.

5 Q Did you ever have a discussion of the information
6 included in this Exhibit 6?

7 MR. WILLIAMS: Objection to the extent your answer
8 will call for a disclosure of communications between
9 yourself and the lawyers.

10 A The discussion I had with this information was
11 pertinent to understanding what products were producing the
12 911 Hz Tone for verification.

13 BY MR. STEWART:

14 Q So did you have discussion about this information
15 with people other than your manager?

16 A I had discussions with Marlon Moo-Young and Mitch
17 Leshim about the contents in this document.

18 Q Did you show them this information after you had
19 compiled it in March of 2005?

20 A Not that I'm aware of.

21 Q So you talked -- you said before that you had
22 talked with those two individuals within the last two or
23 three weeks, is that right?

24 A Yes.

25 Q Did you also talk with them prior to March 2005

1 in compiling the information that's in Exhibit 6?

2 A The information that's in Exhibit 6, I talked
3 with Marlon Moo-Young. I believe I had a conversation with
4 Mitch Leshim. I do not know if specific information came
5 from Mitch or from Marlon.

6 Q At that time, in March of 2005 and before, who
7 else did you talk with about 911 Hz Tone products?

8 MR. WILLIAMS: Objection. I instruct you not to
9 answer if your answer were to involve discussions with
10 lawyers.

11 A Can you clarify.

12 BY MR. STEWART:

13 Q Yes, let me rephrase that.

14 In responding to your manager's request for you
15 to compile information about 911 Hz Tone products, in March
16 of -- in March or prior to March of 2005, did you speak with
17 individuals other than Marlon Moo-Young and Mitch Leshim?

18 A The only other person I would have spoken to, and
19 I believe he was available at the time I would speak with
20 Marlon, was his manager, Tim Quirey.

21 Q Tim Quirey. Did you collect any documentation at
22 that time in support of the information you've compiled in
23 Exhibit 6?

24 A None that I'm aware of. This collection of
25 information was taken from lists of products that we had

1 developed over the years.

2 Q And looking now at Exhibit 7, do you see that
3 it has a similar graphic format and title to parts of
4 Exhibit 6?

5 A I do.

6 Q What do you make of that?

7 MR. WILLIAMS: Objection, vague.

8 A We have standard templates within the corporation
9 so we have the same look and feel across documents.

10 MR. STEWART:

11 Q Okay. Tell me what classes of customers are
12 there for the 911 Hz Tone products?

13 MR. WILLIAMS: Objection, that's vague.

14 A Can you clarify? What do you mean "classes of
15 customers".

16 BY MR. STEWART:

17 Q Has Motorola identified any classes of potential
18 customers for purchases of 911 tone products?

19 A Have we identified if Motorola -- specifically
20 the GEMS organization -- sells to customers who require
21 private system communications systems, so that they can have
22 control of their communication methods?

23 Q Yeah, okay. What kinds of customers buy 911 Hz
24 Tone products?

25 A The types of customers are normally, but not

1 specifically, in the public safety arena, purchasing agents
2 and groups like that, the customer who interacts with the
3 sales force.

4 There is fire departments and other parts of the
5 public safety grouping. There are enterprise organizations
6 that require a dedicated communication system, critical
7 infrastructure, which would be typified by utilities and
8 other organizations like that.

9 And that is a fairly broad estimate of the types
10 of customers that the direct sales force interacts with.

11 And we then also work with ^{lessors} ~~lessors~~ of systems
12 where they purchase infrastructure and then lease out the
13 products to the eventual end user.

14 Q Can you give me an example of that kind of
15 customer?

16 A Off the top of my head, it could be a
17 communication company. I don't want to give specific names
18 because I don't know if they are specifically in this
19 configuration, where they would -- they will have a
20 communication system set up over a city, and they would
21 lease out or sell radios to, say, construction companies,
22 where the construction company is not required to install
23 their own communications, but this allows communication at
24 multiple sites.

25 Q Has this -- those are three different kinds --

1 public safety, enterprise organizations and lessors of
2 systems.

3 Are there more kinds of customers who buy these
4 products?

5 A There are -- I mean, that is our majority
6 numbers. I mean, there are groups, you know -- news groups
7 purchase these radios sometimes such that they can get them
8 programmed up to be able to listen to police activity for
9 information, and things like that.

10 There are people who work at oil refineries.
11 There is -- these particular products I've listed --
12 customers I've listed are focused on, the voice-based
13 products that integrate with the system and the
14 infrastructure.

15 Q And have these kinds of customers -- let me start
16 over again.

17 Back in 1991, were there different kinds of
18 customers who bought 911 Hz products?

19 A Not that I'm aware of.

20 Q Okay. What are Motorola's principal competitors
21 for products like the 911 Hz Tone products?

22 A Specific to -- specific to the competition in
23 using the 911 Hz, or, you know, the 911 Hz would indicate
24 that you are referring to system or trunking based products.
25 Am I understanding -- am I understanding the question?

1 Q I think we talked earlier this morning about the
2 911 Hz products being trunking-based voice services for
3 which that particular type of availability, channel
4 availability message was appropriate, and I guess rather
5 than my saying that, I will take your limitation. That's
6 right. We are talking about trunked voice systems.

7 A Okay. Of competitors that operate on a trunked
8 voice system, there is E. F. Johnson, there is Macom, there
9 is Kenwood, there is Icom, there is Vertex; there is
10 probably going to be more competitors in the future, and
11 there is probably competitors in the past.

12 But of the ones that are primary competitors, I
13 believe it's those five..

14 Q And does each of those five sub products that
15 include a -- a Talk-Permit tone or a Call-Back tone?

16 A It would be my assumption that those products
17 would require some type of indication to notify the user
18 that take either the channel is available or that the ^{microphone} ~~the mike~~
19 is active.

20 Q I think we talked before, but let's confirm it
21 here. Have you done any investigation to determine whether
22 any of the products of any of those five companies produce
23 a 911 Hz Tone?

24 A Currently we are investigating the audio and
25 other aspects of those devices. Due to the nature and

1 requirements of how you have to configure the products, we
2 are working through some details.

3 Right now we do not have elements that are
4 working, say, from Macom or Kenwood, or of these other
5 competitors that we do have.

6 Q I'm sorry, I don't understand your answer.

7 A The radio needs to be operating on a system such
8 that you have an opportunity to be in a situation where the
9 radio would generate that tone.

10 And currently we are working through some issues
11 to actually get the radio we do have up on a system so we
12 can validate the performance.

13 Q Okay. So you do have two-way radio devices from
14 those five manufacturers?

15 A We do.

16 Q And you are unable to perceive tones generated by
17 those products?

18 A Currently we are now focusing on that aspect.

19 Q And what is the purpose of your investigation of
20 those devices?

21 MR. WILLIAMS: Objection to the extent your answer
22 will require you to divulge communications between you and
23 your lawyers.

24 A We have spent time identifying the robustness of
25 the physical products. We are now evaluating the

1 performance of these products, and these would include any
2 tones it generates, response on a system, and overall radio
3 performance.

4 Q And that is yet to be accomplished as you have
5 said, correct?

6 A Correct.

7 Q And to your knowledge, has Motorola engaged in
8 any -- in an investigation of those performance
9 characteristics of competitors' two-way radios before now?

10 A It is an ongoing -- it is an ongoing process. We
11 have had previous products that we focus on the durability.

12 We are now trying to establish operational
13 performances. But we also have -- when working on user
14 systems that have a mix of products, we are -- they are
15 evaluating their performance.

16 Q Do these products have an array of features or
17 functionalities that would require them to have multiple
18 different tones as the 911 Hz Tone products we looked at
19 earlier today?

20 A It would be my assumption, and I would consider
21 this a reasonable assumption that it would generate
22 different tones.

23 We have certainly heard different tones not in a
24 trunked operation, but different tones come from the device.
25 So I think it would be a fine assumption to say that it

1 would produce multiple tones while operating in that mode.

2 Q How have you heard different tones coming from
3 the device?

4 A Powering the device on, entering menus,
5 interaction with the devices.

6 Q And how did you acquire those devices?

7 A Through purchase.

8 Q Is it possible then to purchase a device, one of
9 these two-way radio devices, without having them
10 operational?

11 A Can you clarify.

12 Q Well, you said that you are not able to make them
13 make the -- the call-back tone at this point, is that right?

14 A You can purchase a product that is not configured
15 to operate on a system such that you could observe its
16 performance on a trunk system.

17 They would still operate. You could make it
18 operate without any type of restriction in a unit-to-unit
19 perspective, but operation on a trunked system does require
20 security methods that are applied for configuration for a
21 particular system. That's done on the user's behalf for
22 security.

23 Q Okay. And the Talk-Permit tone and the Call-Back
24 tone are only accessible in a trunked operation mode, is
25 that right?

1 A It is -- the tone is generated once the radio is
2 configured for transmission on a trunk system.

3 Q Does it have to be -- I want to talk to you about
4 that next. In fact, you mentioned before that at trade
5 shows and in sales rep visits to client facilities, you
6 arrange to have the devices operational so they can be
7 demonstrated, is that right?

8 A That is true.

9 Q Okay. Exactly how does that work? Let's look at
10 trade shows first.

11 A That's the easiest configuration. We bring our
12 own system such that they are configured to operate, and
13 they are on display in the trade show, on the floor, for
14 customers such that, you know, they can wander around and
15 use the products, interact with it.

16 They hear the tone as they were transmitting back
17 and forth between -- between different people utilizing the
18 radios.

19 Q And just so I'm clear, in a trunked operation,
20 there is a base station that is -- that operates wirelessly,
21 is that correct?

22 A There is a -- there is a base station that is
23 communicating over the air to the radios.

24 Q Right. And without that base station in place,
25 these radios -- we talked before about the fact that they

1 are capable on a unit-to-unit basis. They would be able to
2 communicate with each other, correct -- just by turning them
3 on?

4 A By turning a radio on, if it is configured, you
5 can communicate with another radio directly if it's
6 configured.

7 Q I see. And are the 911 Hz Tone products sold by
8 Motorola configured for either mode of operation, or does it
9 depend on the customer's requirements?

10 A Depending upon how the product is configured, it
11 can do either unit-to-unit, or unit-to-unit and
12 infrastructure-based communications.

13 Q Now, what is the difference from the -- what is
14 the difference in communications capability as between the
15 trunked operation and the unit-to-unit operation?

16 A And this is -- I'm going to ask for clarity
17 because there could be several aspects here.

18 So can you give me a little clarity here?

19 Q Is group call possible in a unit-to-unit
20 configuration?

21 A If I'm configured in a unit-to-unit mode, if I
22 press the Push-to-Talk button, the microphone becomes
23 active. I will communicate to multiple units who are
24 configured to receive my transmission.

25 Q Okay. So when you go to a trade show, you set up

1 a base station and configure the handsets to operate via
2 trunked operation, is that right?

3 A Correct.

4 Q And then what happens? A potential customer
5 comes to the booth. What happens?

6 A A customer can come to the booth and have a
7 conversation with either the staff that's first on the
8 products, or with their -- a direct sales member, and they
9 would converse, they would be able to use the products,
10 interact.

11 At that point, the tone is audible when
12 transmission is occurring through the base station. The
13 unit is generating the tone, and it's showing the forms and
14 functions of the products.

15 Q And do sales people for Motorola demonstrate the
16 functions of the handsets?

17 A It depends upon the situation. They could.
18 There could be a -- it's normally a Motorola employee who is
19 there, you know, going through the process.

20 Whether it is the direct sales force person,
21 whether it is a business member who is at the booth, or
22 whether it is a booth staff, it's just showing the operation
23 availability of the features.

24 Q Does this kind of a trunk operation require an
25 FCC license?

1 A Yes, it does, for these particular products.

2 Q And does Motorola have that license? Is that how
3 it demonstrates these capabilities at trade shows?

4 A I go under the assumption. I do not know for
5 sure. I would assume, but that's not -- I'm not part of
6 that effort.

7 Q Or a customer could have a license, is that
8 right?

9 A Correct, correct.

10 Q So if a customer doesn't -- well, looking back at
11 your competitors' products that you are looking at, what is
12 it that's preventing you from being able to observe the same
13 performance capabilities?

14 A The -- for security purposes on products,
15 customers have requested that you require a security method
16 to limit the programming of the products.

17 Currently we have -- we have a system at my
18 particular facility where I am based that we are looking to
19 place these products on that system with the frequencies
20 that we have from the FCC.

21 We are just in the middle of getting the security
22 methods such that we can program these appropriately to
23 operate on the system.

24 Q And is it the case generally that it's possible
25 to use two-way radio devices from one manufacturer on

1 another manufacturer's infrastructure?

2 A It depends upon the infrastructure that they
3 operate on. The -- we already spoke of the Astro Project 25
4 system, which is an open standard.

5 Q Yes.

6 A Such that these products operate on that open
7 standard. Then there are other standards that they do not
8 operate on.

9 Q And do any of your customers have handsets from
10 competing manufacturers that they use on the same system
11 with which -- on which they use Motorola 911 Hz Tone
12 products?

13 A Again, it depends upon the type of system they
14 operate on.

15 Q But the answer is yes, some of them do?

16 A For an Astro 25 -- or the APCO Project 25 system,
17 they can have multiple vendors on it.

18 On previous systems, it was Motorola products
19 only, and we have -- we have an agreement with E. F. Johnson
20 such that they can produce products that work on that system
21 also.

22 Q Have you seen that agreement?

23 A No, I have not.

24 Q How long has it been in place?

25 A I do not know.

1 MR. STEWART: We would ask for that to be produced
2 to the extent it's responsive to our discovery requests,
3 which it sounds to me as though it may be.

4 MR. WILLIAMS: We will take that under advisement.

5 BY MR. STEWART:

6 Q Okay. So let me ask you the more general
7 question now that we have talked about the details.

8 What conditions and actions or any other
9 circumstances are necessary for a potential customer to be
10 able to hear the 911 Hz Tone?

11 A When you say potential customer, are you assuming
12 that they have infrastructure or a system already in place
13 or not?

14 Q Let's assume that they don't.

15 A They don't. If they came to any trade show where
16 we have a system installed for display of products for
17 operation of products, they would just have to approach the
18 booth or speak with their direct sales Motorola employee,
19 and they could have a presentation of the products.

20 Q So it's necessary to have the infrastructure in
21 place and the product configured to work with the
22 infrastructure on a trunked basis?

23 A Correct.

24 Q Okay. And once those conditions are satisfied,
25 the potential customer could hear all of the tones that are

1 emitted by this device?

2 A They would be able to hear the tones associated
3 with the -- with the operation of the radio for which it was
4 configured for. By putting it on the system does not mean
5 they hear all the tones.

6 Q Are there circumstances under which it would be
7 put on a system and they would not hear the Talk-Permit
8 tone?

9 A There is a situation in which -- for a mode
10 called surveillance where the radio is meant to be
11 completely quiet. There would be no tone that would come
12 out of the micro -- out of the external speaker, but would
13 be heard with an ear piece.

14 Q And that's true for the sender and the receiver?

15 A The tone is not -- does not transmit over the air
16 for the receiver to hear. The tone is in the product.

17 The user who is trying to transmit the tone is
18 instructional as far as you can now transmit and, again, in
19 relationship to this is a -- a Motorola product.

20 Q So what's the difference between the Talk-Permit
21 tone and the Call-Back tone?

22 A A Call-Back tone is if the channel is busy and I
23 get a tone telling me so. Then, once the channel is
24 available, you hear the Call-Back tone saying essentially
25 you can now try again.

1 When you try again, if the channel is still
2 available, you will again hear your Talk-Permit tone. The
3 radio says here is -- I'm playing you this tone to tell you
4 that the microphone is available for you, please start
5 communicating.

6 Q In this situation at a trade show, when potential
7 customers were using the phone and they could hear the
8 Talk-Permit tone, was that always in connection with the
9 actual operation of the Talk-Permit function?

10 MR. WILLIAMS: Objection, that's vague.

11 A Yes.

12 BY MR. STEWART:

13 Q Let me ask it this way: When you push the button
14 and you heard the tone, that's because the -- the channel
15 function was working, is that right? The communication
16 channel open function was working?

17 A The Talk-Permit tone from its inception has
18 always indicated that when you hear this tone, you are being
19 told that either there is a channel available for you now,
20 or that the channel has been -- you know, essentially you
21 have the channel. The microphone is active. You can now
22 speak.

23 Q And were there times -- are there times, I'm
24 sorry, when the tone is heard and that's not the case?

25 A No. The tone is specific to -- the sound is

1 specific to those events.

2 Q Was the 911 Hz Tone -- I'm sorry.

3 Let me -- in the context you've described earlier
4 in which a sales rep would go to a customer facility, how
5 then would that work? How would the tone be demonstrated in
6 that context?

7 A There is a -- several different ways that that
8 could be established. The basics do not change. The radio
9 needs to be configured to operate on the system.

10 The sales individual can either work with the
11 customer to configure the radio on sites; the customer would
12 have the pertinent security method to insure the radio got
13 configured.

14 The sales individual could work with a support --
15 a staff support company. Not all companies service their
16 own products. They will have an outside company service
17 those products.

18 They could work with that service provider to
19 configure it appropriately and, then, work with the
20 customer.

21 As long as the configuration is completed
22 properly, operation will occur.

23 Q And in that context as well, is it the case that
24 when you hear the tone, it's because the channel open
25 function is working?

1 A Again, the tone has always been in reference to
2 either the call-back availability or of the microphone
3 active and communications occurring.

4 MR. STEWART: I would like to have marked as Klein
5 Exhibit 8 an advertisement that was provided to us in
6 discovery.

7 (Klein Deposition Exhibit
8 No. 8 was marked as
9 requested.)

10 A Okay.

11 BY MR. STEWART:

12 Q Do you recognize this document?

13 A I recognize it as the Astro XTS 3000
14 specification sheet. I have seen this document before.

15 Q Where have you seen it?

16 A In my daily job functions.

17 Q Is this something you provide to potential
18 customers?

19 A If requested, yes.

20 Q What is the purpose of it?

21 A This document, to the best of my understanding
22 and my use of this document, is to identify the form
23 factors, the overall form of the products, weights,
24 durability, ruggedness, frequency, supports, and high level
25 protocol supports of products.

1 Q And the listing of features on the front page,
2 does that -- is that what you are saying?

3 A Those are very high level protocol statements.

4 Q Okay. And can you look at this and tell me
5 whether there is any mention or identification of the
6 911 Hz Tone.

7 A There is -- from my visual inspection, there is
8 no direct specification of the 911 Hz Tone beyond the
9 stipulation of the protocols that would require the tone.

10 MR. STEWART: Let me have marked as Klein Exhibit 9
11 a one-page advertisement provided to us in discovery.

12 (Klein Deposition Exhibit

13 No. 9 was marked as

14 requested.)

15 BY MR. STEWART:

16 Q Do you recognize this document?

17 A I have seen this document before in my normal job
18 functions.

19 Q What is it?

20 A It is a -- a document that's to draw additional
21 attention to the robust durability of a particular version
22 of the XTS 3000 referred to as the XTS 3000 Rugged.

23 Q And is this a print advertisement that's placed
24 in publications?

25 A I do not know if it's been placed in

1 publications. This was a document -- an informational
2 element that I have used, and I am familiar with others who
3 have used this at trade shows and also as customer
4 literature.

5 Q How do you use it at trade shows?

6 A When requests come in about the durableness of
7 the products and when they have keen interest in
8 significantly more robust products than our current lines
9 for ones that are submersible, marine patrol customers, as
10 such.

11 Q Can you tell me whether there is any mention made
12 of the 911 Hz Tone in this advertisement?

13 A No, there is not mention of any features that I
14 can tell from what I'm seeing, beyond the form factor
15 itself.

16 Q What do you mean when you say "form factor"?

17 A Large knobs set further apart, large push to talk
18 button, large uncramped keypad, large display, robustness,
19 submersibility, it's light, it's more visible.

20 Q Are you aware of any -- let's start with print
21 advertising -- used by Motorola with respect to 911 Hz
22 products that mentions the 911 Hz Tone?

23 A Print?

24 Q Yes.

25 A I'm not aware of any print advertisement that

1 explicitly states the 911 Hz Tone. Well, let me rephrase
2 that.

3 We say print, beyond -- you know, when you say
4 advertisements, this could be advertisements. Beyond the
5 manuals that it's printed in, beyond the training
6 information it's printed in, beyond those types of
7 discussion, direct discussion of the Talk-Permit tone, if
8 you are referring specifically to an ad in a magazine, I'm
9 not aware of an ad in a magazine that specifically states
10 the 911 tone.

11 Q Your reference to user manuals was to the kinds
12 of information we saw in Exhibits 3, 4 and 5, is that right?

13 MR. WILLIAMS: Let me get those for him,
14 please.

15 BY MR. STEWART:

16 Q Yes.

17 A I stipulated these manuals that reference the
18 Talk-Permit tone; also training information that references
19 the Talk-Permit tone, and other items.

20 Q I want to go one by one. The user manuals you
21 referred to are these -- are like these exhibits that we
22 reviewed previously, is that right?

23 A Yes.

24 Q And the references to the tones were the ones
25 that we looked at ourselves in looking at these user

1 manuals, is that right?

2 A The references that I had were to the
3 stipulations of the alert tone table as stipulated, six
4 through eight, and also the descriptions within the text of
5 the document that stipulates the tone itself, and the
6 expectations of the tone, and interaction with the product
7 that is producing that tone -- interaction with the products
8 to produce that tone.

9 Q Okay. Now let's turn to training materials.
10 What are you referring to there?

11 A Motorola has gone through and put efforts in the
12 past to working with customers such that they understand the
13 product and manuals such as this, such that they understand
14 the product.

15 But they have also developed training information
16 such that they will have a live trainer out with the
17 customer that goes through the operation of the products,
18 speaks about the tone, has configurations in which they can
19 hear the tone. So that's discussed.

20 Then there has been -- as technology has moved
21 forward, that training has continued and been developed more
22 so such that there are CIT, computer interactive training.

23 There is an on-line method, and that itself again
24 has interaction with describing the product, describes the
25 tone, actually plays the tone so you can audibly hear the

1 sound of the Talk-Permit tone, and then that is either
2 singular solo training of the customers themselves, end
3 users, or there are trainers that work with the customers
4 and that material such that the same -- the same
5 functionality and the training of understanding the -- these
6 tones and their meanings are accomplished.

7 So there is a -- those are the -- in my
8 understanding, and I easily could be potentially missing out
9 some opportunities, but those are my understanding of the
10 different opportunities that we deliver and speak with a
11 customer directly about the tone.

12 Q And, first, when you are talking about live
13 trainers, a live trainer would use the tone for the purpose
14 of demonstrating the operation of the channel-open feature,
15 is that right?

16 A Correct.

17 Q Or function. With respect to the computer
18 training, we were handed this morning by counsel for
19 Motorola a box of documents that we hadn't seen before, plus
20 two CD-ROM discs which appear to include a video and a
21 PowerPoint training program of some sort.

22 Do you know that document?

23 A I am -- if it is what I think it is, I -- or the
24 training information I have seen in the past, I have some
25 familiarity with it. But I'm making an assumption that's

1 the same training information that I've seen in the past.

2 MR. STEWART: We are a bit at a loss here because we
3 can't actually introduce it, because we have got our one
4 copy, and we may want to go back and maybe provide it to
5 your counsel and then stipulate that's the same thing we are
6 talking about.

7 I don't want to have any confusion about what it
8 is we are actually talking about here.

9 MR. WILLIAMS: Would you like to go off the record.

10 MR. STEWART: Yes, let's go off the record.

11 MR. WILLIAMS: Shall we take a five-minute break.

12 THE VIDEOGRAPHER: This is the Videographer. The
13 time is now 2:42 p.m. We are now off the record.

14 (Whereupon, a short recess was
15 taken.)

16 THE VIDEOGRAPHER: This is the Videographer. We are
17 back on the record. The time is 2:55 p.m.

18 MR. STEWART: I'm going to ask that these two CD's
19 of which I have only a single copy be marked as Klein
20 Exhibits 10 and 11.

21 (Klein Deposition Exhibits
22 Nos. 10 and 11 were marked as
23 requested.)

24 BY MR. STEWART:

25 Q Now, what's been marked 10 was presented to us

1 with a Bates number MOT 0302268. What we have marked as
2 Exhibit 11 has the Bates number MOT 002269.

3 We understand that 2268 has an 8-minute video.
4 2269 has that video imbedded within some kind of training --
5 interactive training module, okay.

6 And you are aware of what it is that we are
7 talking about?

8 A Given that description, I believe I am.

9 Q Okay. Now, I would like to ask you about -- what
10 I'm calling the training module on 269. You have seen that
11 yourself?

12 A Yes, I have.

13 Q And what can you tell me about it? When was it
14 produced?

15 A That particular module -- or that particular
16 version, I am -- I do not know the specific timeframe. It
17 has been in the last few years, as far as being developed
18 and deployed.

19 Q Could it have been as early as 1991?

20 A No, it could not have been.

21 Q And are you aware whether there are any other
22 training modules with respect to other 911 Hz Tone products?

23 A I'm aware that the Training Department, over the
24 last few years, have been developing training information
25 for the 911 Hz products as we have defined it.

1 Q So might there be other interactive computerized
2 modules like the one that's on 269?

3 A Yes, there may be other interactive modules as
4 such.

5 Q Who is the head of the Training Department?

6 A I would go to -- I guess -- David Klein, my name
7 sake.

8 Q Okay. All right. And he and Monica Gingells
9 were the two people in the training group that you tried to
10 contact unsuccessfully, is that right?

11 A Correct.

12 Q Do you know how this particular training module
13 was discovered and produced to us this morning?

14 A I spoke with Janice Morey.

15 Q Okay.

16 A Who is, in my understanding, an author of these
17 types of manuals.

18 Q "These types" referring to Exhibits 3, 4 and 5.

19 A Yes. In this scenario, It's my understanding
20 that the organization that produced these manuals -- where
21 the verbiage is different between the authors, the tone as
22 listed in Exhibits 3, 4 and 5 being the same.

23 She, it is my understanding, was responsible for
24 and worked with the direct development of the XTS 3000 and
25 the XTS 5000 manuals. I do not know if she was involved

1 with previous versions.

2 And one of the problems we do have with different
3 authors, different verbiage, which is one reason why the
4 training information, delivering it as such -- so they can
5 hear the tones -- whether it describes on pages -- was it
6 eight through whatever -- yeah, six through eight, these
7 characterizations; by being able to hear them, you can
8 clearly identify the distinction versus the organization of
9 the descriptions.

10 Q Okay. So Exhibit 5 is the XTS 3000. You said
11 that that was -- that Janice Morey was the author of that?

12 A She worked on this particular -- I worked with
13 Janice Morey on this particular version of this particular
14 product manual, being this covers the Astro 25 protocol. So
15 I worked with her on this particular one.

16 Q Did you work in particular on the table on pages
17 six through eight that you were just referring to?

18 A No, I did not. No, I did not. Since there are
19 no changes to our tones, there was no reason to visit this
20 -- this listing.

21 Q But there was a change in the way that they were
22 described and grouped --

23 A There has been -- because of authors, the
24 description, as minor as it is, there has been description
25 changes.

1 The tones have shown no change there; audibly the
2 same sounds. But different authors have used different ways
3 to present them.

4 Q Okay. And as you were suggesting, the training
5 module on Exhibit 11 actually produces audible tones, is
6 that right?

7 A Instead of trying to capture the words, it gives
8 you the actual tone -- the actual sounds.

9 Q How is the accuracy of the frequency cadence and
10 duration of the tone enforced?

11 A The accuracy -- per the training information.

12 Q Let's talk about the training information. How
13 do you know that the tone there is actually a 911 Hz Tone
14 just as described in this trademark application?

15 A I would have to -- I would have to assume that
16 the group that developed it did an accurate generation of
17 the tone. I have no reason to doubt that it's not accurate.

18 Q Now, who is the audience for that -- for Exhibit
19 11, the training module?

20 A The training module? The training module could
21 be exhibited to end users, literally fielded users of the
22 products. It could be presented to purchasing agents who
23 are interested in making a purchase of a product; anybody
24 who wants to see the function.

25 This could be applied to new sales members who

1 have exposure to the product, things like that.

2 Q That is, Motorola sales employees?

3 A It could be Motorola sales employees, it could be
4 our -- our ^{lessors} ~~leasers~~ products.

5 Q You mentioned purchasing agents. Are you talking
6 about the individual employees of customer organizations who
7 would be the purchasers?

8 A When we interact with large companies, there
9 would be a -- you know -- a procurement officer or
10 procurement group that the sales group would interact with
11 them and the other decision makers.

12 Some customers are wholly self-contained as far
13 as they maintain the products. Those types of organizations
14 would certainly be interested in this information.

15 Q And as far as you know, in that training module
16 that's on Exhibit 11, is there any presentation of the 911
17 -- audible presentation of the 911 Hz Tone other than in
18 demonstration of the operation of the particular function?

19 A Yes, yes, the tone is available such that in a
20 list of tones, of the list of tones that's called the core
21 -- core tones of the products, you can actually just select
22 strictly the tone and listen to it.

23 Q And when you do that, it is expressly a
24 demonstration of the tone that sounds when this particular
25 function is operational, correct?

1 A It's a table that lists the Talk-Permit tone and,
2 then, a button that you press that it plays the tone.

3 Q And it's not a series of tones that you play for
4 your amusement and edification but, instead, an illustration
5 or demonstration of what it sounds like when you push the
6 Push-to-Talk button, is that right?

7 A Correct, I mean, it is specific to -- upon
8 pressing this icon or button, you hear specifically that
9 tone.

10 Q Okay. Now, has Motorola -- we talked first about
11 the print ads that might run in magazines, and you've talked
12 -- we have talked about those previously.

13 Has Motorola advertised 911 products in other
14 media other than print media?

15 A I am unaware of -- because we go through
16 procurement officers and things like that, the advertising
17 is focused to avenues of such customers.

18 So that would include the trade shows, the
19 promotions and interactive items.

20 I am not aware of any radio or TV ad that
21 specifies a 911 Hz Tone.

22 Q So you mentioned a list of ways in which
23 customers -- potential customers might hear the 911 Hz Tone
24 before -- and I'm going to list then for you here. One was
25 training?

1 A ^{Yes}
 ~~Uh-hum.~~

2 Q One was mentioned in user guides?

3 A ^{Yes}
 ~~Uh-hum.~~

4 Q A third --

5 MR. WILLIAMS: Say "yes" or "no".

6 A Yes.

7 BY MR. STEWART:

8 Q A third was heard at trade shows?

9 A Yes.

10 Q A fourth was a sales rep who demonstrates the
11 product at the customers's facilities?

12 A Yes.

13 Q And a fifth was in effect when you use the
14 product, it's got -- it makes the tone while at the same
15 time being labeled a Motorola product?

16 A Yes, it does.

17 Q Now, are there other ways in which potential
18 customers could have heard the 911 Hz Tone?

19 A Yes.

20 Q How?

21 A If a customer is in the field with another
22 customer of -- with overlapping coverage of systems, they
23 could easily be with somebody who utilizes their Motorola
24 radio, and they could easily hear the 911 Hz tone.

25 A significant number of customers would have

1 systems such that the police would be on one system,
2 potentially the fire could be on another, and there would be
3 numerous occasions where that tone would be played to people
4 who do not actually either carry a Motorola product or
5 operate on that system.

6 Q So they would hear it as it was being operated by
7 somebody who actually had already purchased the product?

8 A Yes, or who had authority. There are times
9 where, in times of crisis and need, Motorola does supply a
10 system, and we supply branded Motorola products to help out
11 in times of need.

12 And there would be a situation where they could
13 easily hear the tone as they are operating on those
14 products.

15 Q Okay. And is that different -- I had considered
16 those kinds of situations to be like the fifth example that
17 you gave me, which was, you use a Motorola phone, it's got
18 Motorola on it -- I'm sorry, not phone but radio. You use
19 it and it's got a Motorola label on it.

20 A Correct, they are -- they are very similar, the
21 distinction being whether the user actually -- it is their
22 product, or if they are actually observing somebody use it,
23 or if it's not their product, but they have been given this
24 Motorola radio to operate in a time of need.

25 Q Okay. Any other ways in which that would happen

1 -- in which a potential customer would hear the 911 Hz
2 Tone?

3 A To the best of my knowledge, beyond -- and just
4 for clarification, on the trade shows, they are trade shows
5 that are open, or they are Motorola sponsored trade shows
6 where we go out and visit customers or groups of customers
7 to exhibit our products.

8 To the best of my knowledge, that I can recall, I
9 believe those are the -- those are the instances where a
10 customer would hear that 911 Hz Tone.

11 MR. STEWART: I would like to have marked as
12 Exhibit 12, Applicant's Response to Opposer's First Set of
13 Interrogatories to Applicant.

14 (Klein Deposition Exhibit
15 No. 12 was marked as
16 requested.)

17 A Okay.

18 BY MR. STEWART:

19 Q Have you seen this document before?

20 A I have seen this document before.

21 Q I would like you just to turn to page seven and
22 look at the response to Interrogatory Number 14 which goes
23 over onto page nine.

24 A Okay.

25 Q Did you assist in producing this list of trade

1 shows?

2 A No, I did not.

3 Q Do you see any listed here that are unfamiliar to
4 you?

5 A There are a few.

6 Q Which are they?

7 A I don't have a working knowledge of DistribuTECH
8 2005.

9 I would need -- I perhaps know the AFCEA West
10 item. I'm not sure of the acronym.

11 Major City Chiefs, that's fine.

12 TechAdvantage is fine.

13 NACO -- I have not. I'm not familiar with.

14 State and Provincial Conference, yes, I have
15 heard of.

16 National Postal Forum, I have not.

17 Navy League, Air Sea Space, I have not.

18 FOSE, I have not.

19 IWCE, I have.

20 NFBPA, I have not.

21 FDIC -- I have heard of the organization. I know
22 we have some interaction with them. I'm not too clear on
23 the contents or, I should say, the extent of.

24 To kind of highlight the ones that are most in my
25 mind, the APCO, the Fire Chiefs, the Rail System Suppliers,

1 the MDUG, IAFC, again, APCO.

2 Let's see, the IACP, ^{Printrak} ~~Print Track~~ Users, the AUSA
3 annual MTG, Canadian APCO.

4 I'm not familiar with the HAPCOA organization.

5 ^{Printrak} ~~Print Track~~ is fine; the Financial Analyst
6 Meeting; the Officers' Meeting the Shareholder Meeting and
7 the other APCO events

8 So I have working knowledge of the events that
9 are directly related to the customer bases that I interact
10 with.

11 Q Can you tell from the names of these -- let me
12 start over.

13 What is the nature of the customers with which
14 you interact?

15 A I interact with the -- again, as defined before
16 -- the public safety, fire, police, and aspects of the
17 federal government.

18 I interact with some utilities and some critical
19 infrastructure organizations, and the -- the people
20 associated with them.

21 I have had limited interaction with our
22 enterprise customers, as they normally focus on data driven
23 products and not voice.

24 Q Can you tell, based on the names of the trade
25 shows that you said you were not familiar with, whether

1 those fall into the category of enterprise customers?

2 A By the description of DistribuTECH,
3 TechAdvantage, some of those, I'm going to draw the
4 conclusion that they are -- they are enterprise based
5 customers.

6 MDUG is our Data Users Group which I have some
7 working familiarity with.

8 Some of these other items that are -- Navy, Army,
9 and some other elements such as those, I know that we do
10 have interactions with them from a federal -- federal
11 discussion and federal trade shows, but I have not worked
12 with those organizations.

13 The ones that define themselves as APCO or MTUG,
14 ~~Print Track~~ ^{Printrak}, and any of the Motorola specific meetings,
15 these are all ones that I have working familiarity with.

16 Q Now, at any of those trade shows, are you aware
17 of any instance in which Motorola featured the 911 Hz Tone
18 other than in connection with the operation of the function
19 that it signifies?

20 A I'm not aware of any other -- any other
21 presentation of that tone.

22 Q Now, are 911 Hz Tone products offered for sale
23 through other channels of trade such as retail or mail or
24 Internet?

25 A It is my understanding that to purchase a new

1 those fall into the category of enterprise customers?

2 A By the description of DistribuTECH,
3 TechAdvantage, some of those, I'm going to draw the
4 conclusion that they are -- they are enterprise based
5 customers.

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7 working familiarity with.

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17 of any instance in which Motorola featured the 911 Hz Tone
18 other than in connection with the operation of the function
19 that it signifies?

20 A I'm not aware of any other -- any other
21 presentation of that tone.

22 Q Now, are 911 Hz Tone products offered for sale
23 through other channels of trade such as retail or mail or
24 Internet?

25 A It is my understanding that to purchase a new

1 Motorola product, you have to go through our established --
2 either direct sales force or be an organization, a lessee of
3 products.

4 There are availability of used products in free
5 marketplace, eBay or whatever. I can't speak to those, as
6 those are either sold as used products by customers or
7 stolen or whatever. So I can't speak to any of that.

8 Q So Motorola itself does not sell through retail
9 stores -- mail or by Internet?

10 A Not -- by Internet, only if -- for specifically
11 the 911 Hz Tone products, the only Internet available
12 purchase is via the Motorola Internet web site where you
13 must be already authorized as a lessee or have an account
14 within Motorola to gain access.

15 MR. STEWART: We would like to gain access to that
16 site. I know we asked counsel for clarification of their
17 response in which you identified the Motorola principal web
18 site, but we have asked for a more specific page designator.

19 And it sounds as though we also need
20 authorization to view that page.

21 MR. WILLIAMS: We will take it under advisement.

22 MR. STEWART: Thanks.

23 BY MR. STEWART:

24 Q Has Motorola ever run focus groups regarding
25 reaction of customers to the 911 Hz Tone itself?

1 A I'm not aware of any focus group that was
2 specifically designated to see the response of a user to the
3 911 Hz Tone.

4 Q Does Motorola run focus groups in general with
5 respect to 911 Hz Tone products?

6 A Motorola does run focus groups -- you know, not
7 necessarily specific focus groups, but those types of
8 interactions with customers based for 911 Hz Tone products
9 and information about the products.

10 Q And are records kept of those focus groups?

11 A I can't stipulate for -- in general. It's my
12 understanding that when research has been completed, there
13 has been documentation associated with it. Whether it was
14 in the form of a trip report or -- you know -- actual
15 findings, some type of report has been generated.

16 Q How -- who has -- who is the custodian of those
17 kinds of documents?

18 A I don't know if there is a specific custodian to
19 those documents. Normally that type of effort ends up being
20 consolidated with a particular program's documentation.

21 Q So for the 911 Hz Tone products, would they be
22 within the product definition marketing organization?

23 A They could be. They could be involved with other
24 organizations also, perhaps the group that actually -- if it
25 was not the Marketing Group, the Product Definition Group,

1 if there was another group that sponsored the research, or
2 conducted the research and gave strictly feedback, verbal
3 feedback.

4 But they potentially have their own documentation
5 for the research that they have completed.

6 Q And is that research run out of the Product
7 Definition Marketing Organization?

8 A It can be requested by the Product Definition
9 Group, not necessarily run by -- there is leanings to who
10 ends up working through that. So it's not strictly to the
11 Product Definition Group.

12 Q Well, if not the Product Definition Group, would
13 it be run or communicated directly with the Marketing
14 Communications Organization?

15 A It could be them. I don't know a particular name
16 within that organization; or it could be within --
17 Engineering has an organization that completes research
18 tasks for the Products Definition Group.

19 Q Are there -- does Motorola create and distribute
20 other audio-visual promotional material regarding the 911 Hz
21 Tone products?

22 A Motorola develops visual presentation and
23 information concerning the products, I believe, on both
24 evidence Number 10, 11 -- there is a video that shows the
25 products' interaction with customers, and kind of highlights

1 and is an advertising method for the products themselves.

2 Q How is that advertising method disseminated?

3 A How is that advertising disseminated. To who --

4 Q To whom would that be shown?

5 A To whom would that particular video be shown?

6 Q Yes.

7 A That video comes with the training information.

8 That training information is available to sales force, given
9 to customers and what not.

10 There has been -- you know -- that particular
11 video, I believe, was on display at several trade shows in
12 the background.

13 There has been web seminars that, you know, the
14 introduction would be this type of informational video
15 information and highlights of the products, information like
16 that.

17 Q And which part of the organization produces that
18 kind of video?

19 A Traditionally it has been the Marketing
20 Communication Group. I say traditionally because they do
21 work in association with other organizations such that they
22 are aware of what focus we would like to highlight, what
23 part of a feature or product that we like to highlight.

24 Q Does Motorola use an outside agency to produce or
25 disseminate audio-visual promotional material about the 911

1 Hz products?

2 A I do not know.

3 MR. STEWART: We would request that all videos such
4 as the one we have been given this morning that relate to
5 the 911 Hz Tone products be produced to us.

6 MR. WILLIAMS: We will take that under advisement.

7 BY MR. STEWART:

8 Q You said that there -- videos like this could be
9 used in web seminars, is that right?

10 A Yes.

11 Q What does that mean?

12 A A web seminar is essentially a presentation of
13 information to customers via a web page that they could log
14 into via the Internet, because we have many customers across
15 many areas.

16 To help get the message out to them and be
17 communicative with our customers instead of expecting them
18 to travel to a particular location, we like to give them
19 opportunities where we can inform them about products and
20 updates and features, and we can do that in a very
21 simplistic, easy manner so they do not have to leave the
22 confines of their company or their particular location.

23 They don't have to spend the time to travel --
24 things like that. It's an ease of getting the message out
25 there in whatever ways.

1 Q Are you aware of any video promotional material
2 produced by Motorola with respect to 911 Hz Tone products
3 that has featured the 911 Hz Tone itself?

4 A I do not know. There are videos out there I'm
5 sure I have not seen. I cannot make a statement to the --
6 to the present that are not.

7 Q So you have not seen any video that features the
8 911 Hz Tone itself?

9 A I personally have not seen a video that featured
10 the 911 Hz Tone.

11 Q How much has Motorola spent on advertising the
12 911 Hz Tone products on an annual basis?

13 A The -- the focus of that type of advertisement to
14 advertise a 911 Hz Tone product, we have traditionally
15 focused on the customers, purchasing agents, elements such
16 as that. So it's come from these meetings, trade shows and
17 other customer interactions.

18 It's difficult to put a single monetary dollar
19 on it. I know that on average we spend approximately
20 \$100,000 alone in support of our MTUG and mutual user
21 groups, or users who use our products in public safety and
22 in critical infrastructure.

23 I know that for the Federal Government's type
24 entities, whether it's DOD, DOJ or other elements, it's
25 approximately \$160,000 on those types of materials and

1 presentations.

2 And this still doesn't include all the efforts of
3 the direct sales force and other groups. This is just
4 strictly in trade shows and, to the best of my knowledge,
5 trade shows and other material that are generated.

6 There is -- of the trade shows that I'm aware of
7 that focus on the APCO based elements, and the Fire Chiefs
8 and Police Chiefs, I know that those are -- those are, I
9 believe, over \$600,000 just on that grouping of those
10 particular trade shows.

11 And I cannot make any statement of, you know,
12 this lengthy list here of all the financial efforts to
13 support these.

14 Q So you've stated \$100,000 in support of mutual
15 user groups in the critical infrastructure --

16 A Approximately \$100,000 in support of MTUG,
17 Motorola Trunks User Group, and in Mutual, which is the
18 Motorola -- it's the -- I don't know the full acronym, but
19 it's the critical infrastructure, utilities and other
20 aspects.

21 Q And that is an annual budget?

22 A Yes.

23 Q Current annual budget?

24 A I believe so, it's 100, \$110,000, somewhere
25 thereabouts.

1 Q Has it been more or less?

2 A I'm not aware of any adjustment.

3 Q How far back are you aware of the budget?

4 A I've been -- it's my understanding that the
5 budget has been like that for the last few years. I can't
6 comment with specifics to that point or beyond in any
7 timeframe.

8 Q And \$160,000 in annual budget for -- what was the
9 next category?

10 A The Federal Government -- and that again is an
11 approximation. This is not my specific financial area.

12 But it is approximately \$160,000, and that is for
13 support of elements like the Navy League, like the Army,
14 stuff, any type of DOJ, Department of Justice, Department of
15 Defense, Department of Treasury, White House Communications
16 -- those organizations.

17 Q And \$600,000 for trade shows for APCO and related
18 public safety organizations?

19 A Correct.

20 Q And that's again an annual budget?

21 A That's an approximation of an annual budget for
22 the APCO groups.

23 Q And these numbers that you have given me are for
24 all promotional activities and staff support and travel
25 expenses, and so on, is that correct?

1 A Those are specific. It's my understanding --
2 again, I'm not the person who sets these up and pays the
3 finances for these events. It's my understanding that it
4 covers promotional material, it covers the booth space,
5 things like that.

6 I -- it certainly doesn't necessarily cover the
7 travel of people who attend, or necessarily the hotel rooms
8 and things like that, but it's focused on material used.

9 Q Okay. And who is the person who knows the
10 answers to those questions?

11 A Well, it would have to be somebody within Mary
12 ~~Botie's~~ ^{Bottie's} organization.

13 Q That's the Marketing Communications Organization?

14 A Yes, it is.

15 Q You said before that there is a separate
16 financial management organization within the business unit?

17 A I'm not familiar with the financials of how these
18 get paid, or the specific budgets associated with each one
19 of these.

20 That is part of the Marketing Communications
21 Organization. I don't have any visibility into that -- that
22 material.

23 Q Okay. Are there written guidelines governing use
24 of Motorola's trademarks?

25 MR. WILLIAMS: Objection. That calls for an

1 activity of the Legal Department. This witness is here as a
2 fact witness.

3 BY MR. STEWART:

4 Q Please answer.

5 A I personally have not read a document stipulating
6 the guidelines of that.

7 Q Have there been any instances of actual confusion
8 between the 911 Hz Tone and any other tone or trademark?

9 MR. WILLIAMS: Objection, that's vague, calls for a
10 legal conclusion.

11 BY MR. STEWART:

12 Q Please answer.

13 A Can you give me a little clarification of by
14 "confusion".

15 Q Has somebody ever, to your knowledge, or to
16 Motorola's knowledge, heard a tone and believed that that
17 was a Motorola product, or heard a Motorola tone and the
18 911 Hz Tone and thought it was a product belonging to
19 someone else?

20 A I don't know. Not in my experience. But that is
21 strictly my own experience.

22 Q Well, you are here speaking on behalf of
23 Motorola.

24 A I have not heard of such, nor have I seen such.

25 Q Did you seek to determine whether there were any

1 instances of actual confusion in preparing for this
2 deposition?

3 A Not specifically of confusion, no.

4 Q Then of what?

5 MR. WILLIAMS: Objection to the extent the question
6 calls for communication between the Legal Department and
7 yourself.

8 A I spent my energy identifying products, tone,
9 information I've already stipulated in questions.

10 BY MR. STEWART:

11 Q So you did not undertake any effort to determine
12 whether there had been instances of actual confusion between
13 the 911 Hz Tone and any other mark?

14 A At -- no, I did not.

15 Q What measures has Motorola taken to enforce its
16 rights in the 911 Hz Tone?

17 A At present, I am unaware of any products that
18 utilizes the 911 Hz tone. I'm unaware of efforts that
19 Motorola has done to protect the tone that we are using
20 beyond the fact that we are using it.

21 Q Do you -- have you during the course of the day
22 today remembered anything else? I offered you the
23 opportunity to come back and tell me if anything came to
24 mind later in the day.

25 A No, not that I'm aware of. No.

1 MR. STEWART: Okay. If we could go off the record
2 for a five-minute break, we will see if we are in a position
3 to wrap it up at this point.

4 THE VIDEOGRAPHER: This is the Videographer. The
5 time is now 3:26 p.m. We are going off the record.

6 (Whereupon, a short recess was
7 taken.)

8 THE VIDEOGRAPHER: This is the Videographer. The
9 time is now 3:44 p.m. We are back on the record.

10 MR. STEWART: Mr. Klein, thank you for your
11 testimony.

12 We have no further questions for you at this
13 time.

14 A All right.

15 MR. WILLIAMS: We have no questions.

16 MR. STEWART: Then the deposition is adjourned.

17 MR. WILLIAMS: We are going to reserve signature.

18 THE VIDEOGRAPHER: This marks the end of videotape
19 Number 3 and the conclusion of the deposition of David
20 Klein.

21 The time is now 3:45 p.m. We are off the record.

22 (Whereupon, at 3:45 p.m., the
23 signature of the witness having
24 been reserved, the witness being
25 present and consenting thereto,

the taking of the instant
deposition ceased.)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NEXTEL COMMUNICATIONS, INC.,)
Opposer,) Opp. No. 91/161,817
vs.) App. No. 78/235,618
MOTOROLA, INC.,) Pot. Mark: SENSORY MARK
Applicant.) (911 Hz tone)

I, DAVID ERIC KLEIN, state that I have
read the foregoing transcript of the testimony given
by me at my deposition on the 19th day of July 2005,
and that said transcript constitutes a true and
correct record of the testimony given by me at

1 said deposition except as I have so indicated on
2 the errata sheets provided herein.
3
4

5 _____
6 DAVID ERIC KLEIN

7 No corrections (Please initial) _____
8 Number of errata sheets submitted _____ (pgs)
9

10 SUBSCRIBED AND SWORN TO
11 before me this _____ day
12 of _____, 2005.
13

14 _____
15 NOTARY PUBLIC
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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF C O O k)
3

4 I, RICHARD H. DAGDIGIAN, Illinois CSR No.
5 084-000035, Registered Professional Reporter and Notary
6 Public in and for the County of Cook, State of Illinois, do
7 hereby certify that previous to the commencement of the
8 examination, said witness was duly sworn by me to testify
9 the truth; that the said deposition was taken at the time
10 and place aforesaid; that the testimony given by said
11 witness was reduced to writing by means of shorthand and
12 thereafter transcribed into typewritten form; and that the
13 foregoing is a true, correct, and complete transcript of my
14 shorthand notes so taken as aforesaid.

15 I further certify that there were present at the
16 taking of the said deposition the persons and parties as
17 indicated on the appearance page made a part of this
18 deposition.

19 I further certify that I am not counsel for nor in
20 any way related to any of the parties to this suite, nor am
21 I in any way interested in the outcome thereof.
22
23
24
25

1 I further certify that this certificate applies to
2 the original signed IN BLUE and certified transcripts only.
3 I assume no responsibility for the accuracy of any
4 reproduced copies not made under my control or direction.
5

6 IN TESTIMONY WHEREOF, I have hereunto set
7 my hand and affixed my notarial seal this 20th day of
8 July, 2005.
9

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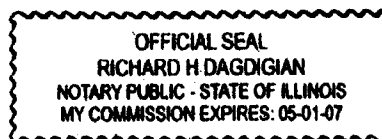
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13 My Commission expires

14 May 1, 2007.
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Richard H. Dagdigian
Richard H. Dagdigian, CSR, RMR, CRR



ERRATA

Deposition of: David Eric Klein

I wish to make the following changes for the following reasons:

<u>CSS</u>	Page	Line	Change:	Reason:
✓ 5		11	TVMP – TBMP	Spelling Error
✓ 36		6	Leshim – Leshin	
✓ 17		8	Leshim – Leshin	
✓ 54		17	Leshim – Leshin	
✓ 18		15	Leshim – Leshin	
✓ 58		6	Leshim – Leshin	
✓ 18		23	Leshim – Leshin	Spelling Error
✓ 49		23	Talk-Permits – Talk-Permit	Spelling Error
✓ 53		8	delete “it was not”	Clarification
✓ 56		9-10	Pitman – Pittman	
✓ 21		14	Pitman - Pittman	
✓ 57		5-6	Pitman – Pittman	
✓ 21		25	Pitman – Pittman	
✓ 57		15	Pitman – Pittman	

✓23	19	Change:	Pitman – Pittman
		Reason:	Spelling Error
✓28	11	Change:	Mike – Microphone
✓42	25	Change:	Mike – Microphone
✓92	18	Change:	Mike – Microphone.
		Reason:	Abbreviation correction
✓40	18	Change:	Jim Sarallo
		Reason:	Spelling Error
✓40	24	Change:	Mary Bottie
✓132	11-12	Change:	Mary Bottie
		Reason:	Spelling Error
✓41	4-5	Change:	Craig Chenicek
		Reason:	Spelling Error
✓41	8-9	Change:	Kurt Brasch
✓78	25	Change:	Kurt Brasch
		Reason:	Spelling Error
✓59	12	Change:	Even – Event
		Reason:	Correction
✓59	24	Change:	Aaron – Error in
✓58	23	Change:	esthetic – aesthetic
✓60	8	Change:	esthetic – aesthetic
		Reason:	Spelling Error
✓63	23	Change:	150 point-whatever Hz.

✓ 90	11	Reason:	Correction
		Change:	leasers -- lessors
✓ 116	4	Change:	leasers -- lessors
		Reason:	Correction
✓ 118	1	Change:	Yes
✓ 118	3	Change:	Yes
		Reason:	Clarification
✓ 122	2	Change:	Printrak
✓ 122	5	Change:	Printrak
✓ 123	14	Change:	Printrak
		Reason:	Spelling Error

Signed: [Signature]

Dated: Aug 29 2005

EXHIBIT 2

Nextel Communications, Inc., Opposer, v. Motorola, Inc., Applicant
Opposition No.: 91/161,817
Application No.: 78/235,618
Mark: Sensory Mark (911 Hz Tone)

Exhibit 2 in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD

NEXTEL COMMUNICATIONS, INC.,)

Opposer,)

v.)

MOTOROLA, INC.,)

Applicant.)

Opp. No.: _____

App. No.: 78/235,618

Pot. Mark: SENSORY MARK
(911 Hz tone)

BOX - TTAB - FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

NOTICE OF OPPOSITION

Honorable Commissioner:

NEXTEL COMMUNICATIONS, INC. ("Opposer"), a corporation duly organized and existing under the laws of the State of Delaware, located and doing business at 2001 Edmund Halley Drive, Reston, VA 20191, believing that it will be damaged by registration, hereby opposes Application Serial No. 78/235,618, filed April 9, 2003, under the Trademark Act of 1946, as amended ("Lanham Act"), in the name of MOTOROLA, INC. ("Applicant").

The grounds for opposition are as follows:

1. Opposer is one of the largest providers of cellular telephone and dispatch communications services in the United States, and currently has over 12 million subscribers to its services nationwide.

2. Opposer and Applicant have a long-standing business relationship, whereby Applicant manufactures phones, and accessories therefor, for sale by Opposer for use with Opposer's cellular telephone and dispatch services.

3. Applicant manufactures phones and accessories for Opposer's direct competitors.

4. On April 9, 2003, Applicant filed an application for registration of an electronic sound consisting of a tone at 911 Hz played at a cadence of 25 milliseconds (ms) on, 25 ms off, 25 ms on, 25 ms off, 50 ms on ("the 911 Hz Tone Application"). The 911 Hz Tone Application was assigned Serial No. 78/235,618, and was published for opposition in the Official Gazette on February 24, 2004. As published for opposition, the goods recited in the 911 Hz Tone Application are "[t]wo-way radios."

5. The 911 Hz Tone Application was filed under Section 1(a) of the Lanham Act, and claimed May 6, 1991, as the date of first use and the date of first use in commerce.

6. On October 17, 2003, the United States Patent and Trademark Office ("USPTO") issued an Office Action in connection with the 911 Hz Tone Application, requiring a description of the 911 Hz tone and a specimen evidencing use of the 911 Hz tone in commerce.

7. On October 17, 2003, Applicant submitted a response to the USPTO Office Action. The response included a description of the 911 Hz tone as follows:

"[t]he mark is an electronic chirp consisting of a tone at 911 Hz played at a cadence of 25 ms ON, 25 ms OFF, 25 ms ON, 25 ms OFF, 50 ms ON."

8. Applicant's response to the USPTO Office Action also included a specimen of use in the form of a compact disc described as "[a] sound file that contains a sound that emanates from a two-way radio to alert user or receiver of an incoming call or the availability to speak." The specimen was asserted to have been in use in commerce since at least as early as the filing date of the application.

9. Upon information and belief, Applicant has not used the 911 Hz tone in commerce in connection with the goods listed in the 911 Hz Tone Application, in derogation of Sections 1 and 45 of the Lanham Act. See 15 U.S.C. §§ 1051, 1127.

10. Upon information and belief, the 911 Hz tone is not inherently distinctive and has not acquired distinctiveness as to the goods listed in the 911 Hz Tone Application, in derogation of Sections 1, 2, and 45 of the Lanham Act. See 15 U.S.C. §§ 1051, 1052, 1127.

11. Opposer avers that, as it is a purchaser and potential purchaser of communications devices incorporating two-way radio capabilities from Applicant and other vendors of such devices, and as Opposer also sells such devices to end users, it will be damaged by the unjustified registration by Applicant of the 911 Hz tone as set forth in the 911 Hz Tone Application.

WHEREFORE, Opposer, NEXTEL COMMUNICATIONS, INC., believes and avers that it will be damaged by registration of the 911 Hz tone as aforesaid, and prays that said Application Serial No. 78/235,618 be rejected, that no

registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

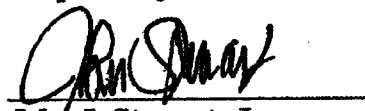
Opposer has appointed JOHN I. STEWART, JR., JEFFREY D. SANOK, and MICHAEL H. JACOBS, members of the law firm of CROWELL & MORING LLP, and members of the Bar of the District of Columbia, to prosecute this Opposition proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

John I. Stewart, Jr.
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-5116

The filing fee in the amount of \$300.00 should be charged to the Deposit Account of Crowell & Moring LLP, Account Number 05-1323 (Docket #100773.92133US). Please credit any overpayments or charge any additional fees to the Deposit Account of Crowell & Moring LLP, Account Number 05-1323 (Docket #100773.92133US).

August 23, 2004

Respectfully submitted,



John I. Stewart, Jr.
Attorney for Opposer

CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone No.: (202) 624-2500
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ESTTA Tracking number: **ESTTA13805**

Filing date: **08/23/2004**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Nextel Communications, Inc.
Granted to Date of previous extension	08/22/2004
Address	Nextel Communications, Inc. 2001 Edmund Halley Drive Reston, VA 20191 UNITED STATES

Attorney Information	John I. Stewart, Jr. Crowell & Moring LLP 1001 Pennsylvania Avenue, NW Washington, DC, DC 20004 UNITED STATES jstewart@crowell.com, kherrmann@crowell.com, wsauers@crowell.com Phone:(202) 624-2500
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Applicant Information

Application No	78235618	Publication date	02/24/2004
Opposition Filing Date	08/23/2004	Opposition Period Ends	08/22/2004
Applicant	Motorola, Inc.		

Goods/Services Affected by Opposition

Class 009. First Use: 19910506 First Use In Commerce: 19910506
All goods and services in the class are opposed, namely: Two-way radios

Attachments	Notice of Opposition (Executed).pdf (4 pages)
--------------------	---

Signature	/John I. Stewart, Jr./
------------------	------------------------

Name	John I. Stewart, Jr.
-------------	----------------------

Date	08/23/2004
-------------	------------

EXHIBIT 3

Nextel Communications, Inc., Opposer, v. Motorola, Inc., Applicant
Opposition No.: 91/161,817
Application No.: 78/235,618
Mark: Sensory Mark (911 Hz Tone)

Exhibit 3 in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment

A STUDY OF THE "CHIRP" SOUND

CONDUCTED FOR
BRINKS HOFER GILSON & LIONE

SEPTEMBER 2005

RL ASSOCIATES

601 EWING STREET SUITE A-11
PRINCETON, NEW JERSEY 08540
(609) 683-9200
(609) 683-0855 FAX

MOT 004675

Confidential - Attorneys' Eyes Only -
Subject to Protective Order in TTAB
Opp. No. 91/161,817

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MOT 004676

Confidential - Attorneys' Eyes Only -
Subject to Protective Order in TTAB
Opp. No. 91/161,817

I - INTRODUCTION

Background

Motorola, Inc. ("Motorola") manufactures and sells a wide variety of communications equipment, including, but not limited to, two-way radios. We have been informed that Motorola's two-way radios are commonly used by a wide variety of public safety personnel, such as police officers, fire fighters, ski patrollers, and emergency medical technicians (EMTs). We understand that to avoid having people speak over one another, the radio has a built-in feature that signals when one person has finished speaking. Specifically, the radios signal a speaker is finished by emitting a "chirp" sound. On page 2 of Motorola's Answer to Notice of Opposition, this chirp sound is described as an "electronic sound consisting of a tone at 911 Hz played at a cadence of 25 milliseconds (ms) on, 25 ms off, 25 ms on, 25 ms off, 50 ms on."

Goal of the Study

In the spring of 2003, Motorola filed an application for registration of the chirp sound. The application was subsequently opposed by Nextel Communications, Inc. ("Nextel"). We understand that Nextel opposed the registration because they claim the chirp sound is not inherently distinctive, nor has it acquired distinctiveness. In partial response to Nextel's concerns, Brinks Hofer Gilson & Lione, (counsel for Motorola) commissioned RL Associates to design and carry out a fair and unbiased test of whether the chirp sound has or has not acquired source indicating distinctiveness (secondary meaning). As we understand it, for sounds (or similar sensory stimuli such as smells) source indicating distinctiveness has two components¹:

- The sound is distinctive in that members of an appropriate public have come to recognize it as indicating (associated with) a particular event.
- It is source indicating, in that, when used to indicate a particular event, members of the appropriate public recognize it as being indicative of a single, albeit possibly anonymous source.

To test whether the chirp sound has in fact acquired source indicating distinctiveness, we designed and carried out a survey of members of the appropriate public of public safety personnel. This is a report on the results of that study.

¹ In this case we think it valuable to distinguish between these two components of source indicating distinctiveness, so in this report we will use that term rather than the more common term secondary meaning.

MOT 004677

II – METHODOLOGY

Introduction

Before beginning our discussion of the specific methodology used in this survey, we think it is important to note that the methodology used in any survey research project involves some degree of compromise between conflicting objectives. For instance, on the one hand, there is a desire to completely control the survey process, and on the other hand, a desire to replicate actual market conditions. It is therefore important to keep in mind throughout our discussion of methodology that, of necessity, the procedures used incorporated such compromises.

General Approach

The primary objective in this case is to determine whether a sound has acquired source indicating distinctiveness among those people who routinely use the equipment that make the sound. Thus, it was obviously necessary to design a study in which respondents were able to hear the sound at issue. Theoretically, one could present the sound to respondents either in person or over the telephone. While a telephone approach is lower cost, in order to present the sound in as clear a way as possible we decided to interview respondents in person.

To a substantial degree, the sound at issue is employed in a piece of equipment (two-way radios) whose use is concentrated in a limited segment of the population, primarily, people who work in one aspect or another of public safety. By far the most cost-effective way to reach a random sample of such individuals is at the respondent's workplace. Such interviews are a common way of doing such surveys, and are generally accepted in the field as valid survey methodology.

Universe and Sample

There are two issues related to drawing an appropriate sample:

1. Defining the proper universe from which to draw the sample.
2. Assuring the sample is drawn in such a way as to be representative of this universe.

Universe – In surveys designed for use in Lanham Act litigation, it is generally accepted that an appropriate universe consists of people who are likely to be actual or potential users of the

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product at issue. Since the product at issue in this case is a two-way radio used primarily by people in the field of public safety, we defined the appropriate universe for this study as police officers, fire fighters, and emergency medical technicians (EMTs).

Sample Frame – The methodology used in this study was in-person interviews conducted with police officers, fire fighters, and EMTs at their workplace. The interviewing firms we selected to conduct the interviews were geographically distributed throughout the United States.²

Sample Selection – The interviewers were instructed to use their local phone book to call police, fire, and EMT stations in their area. Interviews were done either at the workplace of the respondent or in the interviewing firm's offices. They were told to attempt to conduct interviews with 14 different workplaces. At the workplace, as long as each interview was conducted in private (i.e. with only the respondent able to hear the interview), interviewers were permitted to conduct up to two interviews per workplace. If respondents were asked to come to the interviewing firm's office, they were to interview no more than two respondents per workplace.

Honoraria – Both because offering respondents a small honoraria increases the response rate (and thus improves the reliability of the survey), and because we believe that there is an emerging understanding that there is an ethical responsibility to pay willing respondents for their time, respondents were offered \$25.00, either as a donation to their local Police Benevolent Board or their station, or as a cash payment to themselves.

² Interviews were conducted in each of the nine census regions except the East South Central region (KY, TN, AL, and MS).

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Study Design

a) Introduction – The Need for “Controls”

As is true in virtually every perception survey, the design of this survey has to take into account potential sources of error. One type of error is artifacts arising from the survey procedure itself. This type of potential source of error is commonly referred to as “noise”. The most common, although not the only, source of “noise” is that rather than admit they don’t have an answer to a question, at least some respondents will “guess” in their desire to get the “right answer.” Because no matter how well designed a survey it is generally impossible to guarantee that such noise has been eradicated, there is a general need to provide a mechanism to estimate the noise. In the great majority of cases, this mechanism(s) is the use of one form or another of controls.

b) The Controls Used

Aside from the chirp, respondents were presented with three other “control” sounds. The controls were chosen in such a way that we believed that the three control sounds would reflect three of the possible alternatives (single source identifying, event but not source identifying, neither event nor source identifying), and so provide a variety of useful estimates of the underlying tendency of respondents to guess (i.e. of the noise).

- a) The chime sound played at startup of a computer running the Windows operating system. In designing the survey, we believed that a majority of people would be able to identify this sound, and would think it comes from one company (and in particular Microsoft).
- b) A doorbell – In designing the survey, we believed that a majority of people would be able to identify this sound, but would think that it comes from more than one company.
- c) A paper cutter cutting paper – In designing the survey, we believed that a majority of people would not be able to identify this sound.

It is clearly desirable for respondents to hear the sounds in a consistent, controlled manner. To accomplish this, a high quality CD or cassette containing the four sounds described above was produced in a recording studio. To limit any possible order bias, the sounds were presented in two sequences – half the respondents heard the sounds in the sequence: Windows, doorbell, paper cutter, chirp, the other half heard the sequence: doorbell, chirp, paper cutter, Windows.

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Questionnaire

Once the respondent was alone with the interviewer, they were told:

*I am going to have you listen to a few recorded sounds.
You will then be asked some questions.*

The interviewer then started the CD player. With the exception of probe questions and two demographic questions at the end of the questionnaire, the questions and sounds were recorded on the CD. This was done to ensure that everyone clearly heard the same set of instructions. Interviewers were instructed to follow along with the script, pausing the CD when told to do so, and recording the respondent's answers in the appropriate spaces.

The recording began with the following instructions:

You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

Each sound was then identified by a number and played three times, and the recording then continued:

Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound. This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

The interviewer pressed pause and recorded the respondent's answer in the space provided. The interviewer was instructed to probe once with, "Is there anything else?" If the respondent identified the sound, but did not mention the name of a specific company in his or her answer, the interviewer asked a follow-up question:

You said that sound comes from a [ANSWER FROM PREVIOUS QUESTION]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

The interviewer then resumed the CD and the same procedure was repeated for three other sounds. The interviewer then completed the interview by asking two demographic questions:

*Finally, what is your job title?
Is your position paid or volunteer? (Not asked of Police)*

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At the conclusion of the interview, respondents were asked to complete a brief honorarium form specifying the charity they wanted their \$25 honorarium donated to, or acknowledging that they received \$25. A complete copy of the questionnaire used in this study is included in Appendix A.

Interviewing

Courts have consistently held that surveys conducted for use in litigation require that the interviewing be done by professional interviewers who are shielded from the client sponsoring the work, from the purpose of the study, and even from the fact that the study is being conducted for litigation. That is, the interviewing procedures must be "double blind." For this reason, in this study the interviewers and their supervisors were never told for whom the study was being conducted, nor that it was being conducted for litigation purposes. Furthermore, we believe that in this study the interviewer instructions and, more importantly, the test procedures themselves are transparent, in the sense that an independent observer could not tell who had commissioned the survey.

A total of 180 interviews³ were conducted by 8 interviewing firms. Each firm was instructed to conduct one to two interviews at each of 14 different stations. The name and location of each interviewing firm, and the number of interviews conducted by that firm, appears below:

- 13 Quick Test/Discovery NQN in Natick, MA (Ballot numbers starting "1")
- 27 Northeast Data in West Nyack, NY (2)
- 28 Quick Test/Discovery NQN in Olympia Fields, IL (3)
- 10 Helen Nelson Market Research in Rosemount, MN (4)
- 28 Quick Test/Discovery NQN in Atlanta, GA (5)
- 25 Quick Test in Houston, TX (6)

³ Sixteen interviews conducted in Atlanta, GA by Kimberly Dunn are not included in the results presented in the next chapter of this report. Based on a careful review of her work, we believe that at least some of her interviews were not conducted correctly, if at all. For one thing, the answers in two of her interviews (Ballot numbers 5-113 and 5-114) are exactly the same. In both interviews the four sounds are identified as follows: Computer program - Windows; Doorbell; Door closing - Heavy door scrubbing; Cell phone - Nextel. More important, when a member of the RL Associates professional staff attempted to validate these two interviews, in one case she was told the respondent did not work at that station, and in the other case the number was disconnected. We attempted to validate the remaining 14 of Kimberly's interviews. We were told that there was no such person at 6 of the numbers we tried, and one number was for a fax machine. For these reasons, we decided to exclude all of the work done by Kimberly Dunn. We believe that, if anything, discarding the interviews was conservative from the point of view of Motorola (that is, these interviews would have been slightly beneficial to Motorola). Copies of the 16 interviews conducted by Kimberly Dunn are included in Appendix C.

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- 25 C & C Market Research in Westminster, CO (7)
24 Consumer Pulse in Redondo Beach, CA (8)

All interviews were conducted in August and September 2005 by professional interviewers employed by firms that we consider reliable and trustworthy. Aside from their general training and experience as interviewers, each interviewer was provided with a copy of written instructions, which specifically instructed them in the proper procedures for this study. A copy of the instructions is included in Appendix B.

Validation

In order to ensure that the interviewing was carried out as reported, two members of the RL Associates professional staff independently read all of the interviews. This practice allows us to look for patterns in the questionnaires conducted by a particular interviewer (e.g., repetition of an unusual phrase) that indicate that the questionnaires were not completed correctly, or were simply made up by the interviewer.

A second source of validation is the honorarium sheet the respondent was asked to complete at the end of the interview.

In addition, at least 20% of each interviewer's work (other than Kimberly Dunn's) is currently being formally validated by AVC Research, an independent interviewing service located in Belvidere, New Jersey. The purpose of this formal validation is to determine whether the respondent recalled participating in the interview, not to verify a respondent's answers to any particular question. As of this date, it is our opinion that all interviews were carried out according to our instructions.

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III - DATA AND DISCUSSION

This survey was designed to provide information as to whether or not:

- The sound is distinctive in that members of an appropriate public have come to recognize it as indicating (associated with) a particular event.
- It is source indicating, in that when used to indicate a particular event, members of the appropriate public recognize it as being indicative of a single, albeit possibly anonymous source.

The results of the 164 interviews are shown in three tables. Table I shows the results relevant to the first issue tested - whether each sound is recognizable as indicating a particular event. The results show figures for the four different sounds each respondent heard:

TABLE I

Please tell me what it is and what, if anything, you know about this sound.

	<u>Chirp</u>	<u>Paper Cutter</u>	<u>Doorbell</u>	<u>Windows Start-up</u>
Radio	21	0	0	0
Walkie-talkie	27	0	0	0
Radio and walkie-talkie	4	0	0	0
Telephone	13	0	0	4
Paper Cutter	0	21	0	0
Doorbell	0	0	96	0
Computer	3	1	0	87
Any Other	25	67	3	7
Don't Know	7	12	1	2

ALL FIGURES ARE PERCENT OF 164 INTERVIEWS

The 28% (3+25) who said either computer or some other product or service in response to the "chirp" sound clearly indicate some guessing was going on with respect to this sound. However, the fact that not one individual mentioned either radio or walkie-talkie with respect to any of the other sounds shows that those respondents who said either radio or walkie-talkie with respect to the "chirp" sound were not guessing. While there was significant mention of "telephone", and some people may have been referring to the walkie-talkie feature of a telephone, this is not clear in the responses. Therefore, to be conservative (from Motorola's point of view), we did not count telephone answers as indicating a radio/walkie-talkie device. We conclude that net of noise 52% (21+27+4) recognize the "chirp" sound as that made by a radio and/or walkie-talkie.

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Table II shows the results relevant to the second issue tested – whether each sound is identified with a specific source, or if not whether it is identified with one company or more than one company. As in Table I, the results are shown for the four different sounds.

TABLE II

*Please tell me what it is and what, if anything, you know about this sound.
Are you thinking of one company or more than one company?*

	<u>Chirp</u>	<u>Paper Cutter</u>	<u>Doorbell</u>	<u>Windows Start-up</u>
Motorola only	14	0	0	0
Nextel only	29	0	0	0
Motorola and Nextel	9	0	0	0
Motorola and/or Nextel total	52	0	0	0
Microsoft/Windows	0	1	0	66
Any other specific single source	10	13	11	13
Unknown single source	2	1	3	2
Any specified multiple sources	5	4	2	3
Unknown multiple sources	5	13	20	3
Don't know number of sources	19	56	63	10
Don't know what sound is	7	12	1	2

ALL FIGURES ARE PERCENT OF 164 INTERVIEWS

The 22% (10+2+5+5) who either gave a non-Motorola/Nextel source or multiple sources in response to the "chirp" sound clearly indicate some guessing was going on. However, (and this is roughly true for each of the four sounds) the 12% (10+2) who said single source (other than Motorola or Nextel) just about balanced the 10% (5+5) who said multiple sources. Moreover, no respondent said Motorola and/or Nextel for any of the other sounds. We conclude that all of the guessing with regard to the specific source of the "chirp" sound is reflected in the respondents who gave a non-Motorola/Nextel single source – in other words, those respondents who said Motorola and/or Nextel with respect to the "chirp" sound were not guessing. We conclude that net of noise 52% (14+29+9) associate the "chirp" sound with Motorola and/or Nextel.

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The tables on the previous two pages show the proportions of people who met each of the two components of source indicating distinctiveness. Table III shows the proportion of people who gave answers that met both of the two criteria.

TABLE III

Motorola only and radio only	7%
Motorola only walkie-talkie only	3
Motorola only and radio and/or walkie-talkie	11
Nextel only and walkie-talkie only	20
Nextel only and radio only	3
Nextel only and radio and/or walkie-talkie	24
Motorola and Nextel – radio and/or walkie-talkie	7
Motorola and/or Nextel – radio and/or walkie-talkie	42

As discussed on the previous two pages, because respondents were only counted who were not guessing either with respect to the event (i.e. radio and/or walkie-talkie) or with respect to the source (Motorola and/or Nextel) these results are essentially "net of noise". Thus the data shows that approximately 42% of the relevant population recognize the "chirp" sound as that made by a Motorola and/or Nextel radio and/or walkie-talkie.

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IV - PERSONNEL AND REMUNERATION

Michael Rappeport was responsible for all aspects of this survey. Dr. Rappeport's resume, including cases and publications, is attached as Appendix D.

RL Associates is being compensated \$65,400 for this survey. Dr. Rappeport's hourly compensation rate for time spent subsequent to this report is \$500/hour.

Michael Rappeport Sept 14, 2005
Michael Rappeport

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APPENDIX A
QUESTIONNAIRE

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**RL ASSOCIATES
SOUND STUDY - RG682
SCREEN SHEET**

INTERVIEW DATE: _____
START TIME: _____
END TIME: _____

INTRODUCTION: Hello, this is _____ from _____. We're conducting a brief survey among various professionals. I want to emphasize that we are not selling anything, and we will not ask any questions about your work.

Our survey takes less than 10 minutes to complete. The survey involves listening to something on a cd, so it must be conducted in person, either at your station, or our office, whichever is most convenient for you. We will donate \$25 to your...

IF POLICE, SAY: local PBA for your participation in this study.

IF FIRE/EMT, SAY: station for your participation in this study.

IF THE PERSON IS NOT AVAILABLE NOW, DETERMINE A TIME TO CALL BACK.
RESULT IF CANNOT CONTINUE NOW:

- () Agreed to participate - Date and time of appointment: _____
- () Call back to arrange appointment: _____
- () Refused to participate - Terminate and tally

INTERVIEWER INDICATE: 1 POLICE 2 FIRE 3 EMT

RESPONDENT NAME: _____

STATION ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

STATION PHONE NUMBER: (____) _____ - _____

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TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN **BOLD PRINT**.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

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VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

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VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT, ASK:

Is your position...

- 1 paid or
- 2 volunteer?

I (INTERVIEWER PRINT FULL NAME) _____

verify that I conducted this interview on (date) ____ / ____ / ____ at (time) ____ : ____.

INTERVIEWER SIGNATURE: _____

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APPENDIX B

MEMO TO SUPERVISORS AND INTERVIEWER INSTRUCTIONS

MOT 004694

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RL ASSOCIATES

601 EWING STREET SUITE A-11
PRINCETON, NEW JERSEY 08540
(609) 683-9200
(609) 683-0855 FAX

SOUND STUDY - RG682
MEMO TO SUPERVISORS

PLEASE CALL ME AFTER YOU HAVE CAREFULLY REVIEWED THESE INSTRUCTIONS. I WOULD LIKE TO TALK TO YOU BEFORE YOU START THIS JOB.

The respondents for this study are police officers, fire fighters, and emergency medical technicians (EMTs). You are going to have to pre-recruit the respondents, using your local phone book. This is an in-person interview. It can be conducted either at the respondent's station, or at your interviewing facility, whatever is most convenient for you and the respondent. We would like you to conduct at least one interview at 14 different stations (or - if you are conducting the interviews at your facility - with people from 14 different stations). You may conduct up to 2 interviews per station, so, you should end up conducting between 14 and 28 interviews in all.

We are offering to make a \$25 donation to the police officer's Police Benevolent Association (PBA) or the fire fighter's/EMT's station for their participation in this study.

The study involves playing a CD (or cassette) that has four sounds on it, and finding out what, if anything, the respondent knows about those sounds. Most of the instructions to the respondent have been recorded on the CD, so the interviewer just has to follow along with what is written on the questionnaire. During the interview, the interviewer's primary responsibilities include:

- Starting and stopping the CD/tape at the appropriate time
- Writing down the respondent's answers
- Asking the probe question, Is there anything else?
- Asking a follow-up question that is specified on the questionnaire
- Asking two questions at the end of the survey
- Having the respondent fill out the honorarium sheet

If possible, we ask that a MINIMUM OF TWO interviewers work on this project.

Each interviewer is to have his or her own set of interviewer instructions.

*** Before conducting any interviews, ALL interviewers working on this study must read and sign a copy of the interviewer instructions. The signed interviewer instructions must be returned to RL Associates at the end of the study. Work will not be accepted from interviewers who did not sign the interviewer instructions prior to conducting interviews.**

We ask that you carefully review the questionnaire and the interviewer instructions with the interviewers before they start interviewing. It is essential that all interviews be conducted completely and correctly.

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MEMO TO SUPERVISORS - PAGE 2

The Screen Sheet can be filled out in pencil, but the rest of the questionnaire should be completed in **black or blue PEN**. We do not want the interviewer to erase or "white out" ANYTHING that he or she writes. If the respondent changes his or her mind, the change should be recorded verbatim. If the interviewer makes a mistake, he or she should cross out the mistake, and put their initials by the change.

Please be sure the interviewer fills in ALL of the information that is asked for at the end of the questionnaire. We are going to look at this information to verify that the interviews were done correctly. Interviewers are to print their full name, enter the date and time the interview was conducted, and sign the bottom of the interview.

Do not edit the questionnaires. We want to see the questionnaires exactly as the interviewer records them and submits them to you. This is why it is crucial that the interviewer carefully follow the instructions.

We WILL NOT PAY for work that is incomplete, incorrectly completed, or unreadable. If you or the interviewers have ANY questions about this study, please call me!

Please ship the completed study back to our office as soon as it is complete.

- We would like you to fax us the first two interviews you do as soon as they are completed.
- We would like you to send us all of your completed interviews on Friday, September 9 so that we receive them on Monday, September 12. If you are not going to be able to meet this deadline, please let us know.

As soon as you have finished the study, please return all of the materials, including:

- Completed questionnaires
- Signed interviewer instructions
- Signed honoraria sheets
- CD and cassette

You can ship the study back to us in one of two ways:

- a) UPS NEXT DAY AIR - Our UPS shipping number is
- b) FEDERAL EXPRESS P1 - Our Federal Express account number is

If you have any questions or concerns, please call me. Thank you very much.

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601 EWING STREET SUITE A-11
PRINCETON, NEW JERSEY 08540
(609) 683-9200
(609) 683-0855 FAX

SOUND STUDY - RG682 INTERVIEWER INSTRUCTIONS

PLEASE TAKE THE TIME TO CAREFULLY REVIEW THESE INSTRUCTIONS.

*** Before conducting any interviews, you must read AND SIGN a copy of the interviewer instructions (see the bottom of Page 2 of these instructions). It is essential that the interviews be conducted COMPLETELY and CORRECTLY. If you have any questions, please ask your supervisor.**

The Respondents

The respondents for this study are police officers, fire fighters, and emergency medical technicians (EMTs) that have been pre-recruited to participate in this study.

The Questionnaire

This study involves playing a CD (or cassette) that has four sounds on it, and finding out what, if anything, the respondent knows about those sounds. Most of the instructions to the respondent have been recorded on the CD, so you just have to follow along with what is written on the questionnaire. During the interview, your primary responsibilities include:

- Starting and stopping the CD/tape at the appropriate time
- Writing down the respondent's answers
- Asking the probe question, Is there anything else?
- Asking a follow-up question that is specified on the questionnaire (see note below)
- Asking two questions at the end of the survey
- Having the respondent fill out the honorarium sheet

*** The Follow-Up Question**

After the respondents hear each sound, they are asked what it is and what, if anything, they know about it. If the respondent identifies the sound, but does not mention the name of a specific company in their answer, be sure to ask the follow-up question:

You said that sound comes from a [ANSWER GIVEN]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

For instance, if the respondent says the sound is a boiling tea kettle, the follow up question should be:

You said that sound comes from boiling tea kettle. Are you thinking of one company who makes that tea kettle or more than one company who makes that tea kettle?

IT IS IMPORTANT TO NOTE THAT THERE ARE NO "RIGHT" ANSWERS. WHAT WE ARE INTERESTED IN IS WHAT THE RESPONDENT THINKS. TO US, WHATEVER THE RESPONDENT SAYS IS "RIGHT."

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INTERVIEWER INSTRUCTIONS - PAGE 2

The Screen Sheet can be filled out in pencil, but the rest of the questionnaire should be completed in **black or blue PEN**. We do not want you to erase or "white out" ANYTHING that you write. If the respondent changes his or her mind, record the change verbatim. If you make a mistake, cross out the mistake, and put your initials by the change.

Please be sure to carefully fill in ALL of the information that is asked for at the end of the questionnaire. We are going to look at this information to verify that the interviews were done correctly. You must print your full name, enter the date and time the interview was conducted, and sign your full name.

If you have ANY questions about any aspect of this study, please ask your supervisor!

)

* * * SIGN AND RETURN AT THE END OF THE STUDY * * *

I _____ have read the above interviewer instructions on _____ (date)

at _____ (time). INTERVIEWER SIGNATURE:

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APPENDIX C

INTERVIEWS CONDUCTED BY KIMBERLY DUNN

MOT 004699

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Opp. No. 91/161,817**

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

Computer program

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Windows

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Doorbell

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004701

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

Door Closing -

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Heavy door scrubbing

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004702

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

VOICE: Please press pause now.

2-4

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Cell Phone

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Westel

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT, ASK:

Is your position...

- 1 paid or
2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date) 9/6/05 at (time) 1:30.

INTERVIEWER SIGNATURE

Kimberly C. Dunn

MOT 004703

- 1 -

5-114

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

Computer Program

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:
You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Windows

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004704

-2-

5-119

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Door bell

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:
You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004705

-3-

5-114

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

Door Closing

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Heavy door scrubbing

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004706

- 4 -

5-114

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

2-4

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Cell phone

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Nextel

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT, ASK:

Is your position...

1 paid or

2 volunteer?

I (INTERVIEWER PRINT FULL NAME) Kimberly Dunn

verify that I conducted this interview on (date) 9/2/03 at (time) 1:00 :

INTERVIEWER SIGNATURE: Kimberly C. Dunn

MOT 004707

- 1 -

5-115

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)
VOICE: This is Sound Number 2 (Sound x 3)
VOICE: This is Sound Number 3 (Sound x 3)
VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

The computer program windows.

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:
You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

-2-

5-115

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Door bell

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Don't know

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004709

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Opp. No. 91/161,817

-3-

5-115

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

The old roller stamp

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Don't know

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004710

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Opp. No. 91/161,817

-4-

5-115

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

3-1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Nextel, radclaw, signal for a call.

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Nextel - Motorola

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT, ASK:

Is your position...

- 1 paid or
- 2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date) *9/7/05* at (time) *8:45*

INTERVIEWER SIGNATURE:

Kimberly C Dunn

MOT 004711

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Opp. No. 91/161,817

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*The Computer opening up a new
application*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Standard door bell

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004713

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

Un not sure

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004714

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Oh yeah, the Motorola.

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Our radio.

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

Office

IF FIRE/EMT, ASK:

Is your position...

- ☒ 1 paid or
☐ 2 volunteer?

I (INTERVIEWER PRINT FULL NAME) Kimberly Dunn

verify that I conducted this interview on (date) 9/6/05 at (time) 6:30

INTERVIEWER SIGNATURE: Kimberly Dunn

MOT 004715

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*Elevator down tour the fancy ones
when you get to your floor-*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

I don't know that

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

5-117

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

A door bell

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Un sure

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004717

5-117

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

NOT a clue

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004718

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Opp. No. 91/161,817

5-117

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

1-1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Our radios

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Motorola

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT, ASK:

Is your position...

- 1 paid or
- 2 volunteer?

I (INTERVIEWER PRINT FULL NAME) Kimberly Dunn

verify that I conducted this interview on (date) 9/16/05 at (time) 8:30.

INTERVIEWER SIGNATURE: Kimberly C Dunn

MOT 004719

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

Micro soft word

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Doorbell

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

All of them every body makes that Keao

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004721

5-118

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004722

5-118

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4.

VOICE: Please press pause now.

1-1

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Motorolas the company the radio
that we use.

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

fireman

IF FIRE/EMT, ASK:

Is your position...

- 1 paid or
- 2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly C. Dunn

verify that I conducted this interview on (date) 9/6/05 at (time) 1:15.

INTERVIEWER SIGNATURE

Kimberly C. Dunn

MOT 004723

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

Windows

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004724

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

The door bell

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

NOT sure

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004725

5-119

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

*The old credit card machine
things*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Don't have a clue

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004726

5-119

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

1-6

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Motorolas low battery

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT, ASK:

Is your position...

- 1 paid or
- 2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date) *9/6/05* at (time) *2:20*

INTERVIEWER SIGNATURE

Kimberly C. Dunn

MOT 004727

- 1 -

5-120

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

Opening an app. on the computer

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Beats makes windows

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

- 2 -

5-120

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Deer beep

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

N/A

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004729

Confidential - Attorneys' Eyes Only -
Subject to Protective Order in TTAB
Opp. No. 91/161,817

-3-

5-120

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

Don't know

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:
You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004730

-4-

5-120

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

VOICE: Please press pause now.

3-1

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Our Rader's or the nextel

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

both by Motorola

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT. ASK:

Is your position...

- 1 paid or
- 2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date) *9/7/05* at (time) *7:20*.

INTERVIEWER SIGNATURE:

Kimberly Dunn

MOT 004731

- 1 -

5-121

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

Computer start up

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Windows

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004732

-2-

5-121

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

*Mohar detector at the store
or one of those regular door bells*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*No I don't know its probably
the door bell but I don't know who
did make it*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004733

-3-

5-121

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

*Hand copy machine with the
2 or three copies*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Couldn't tell you!

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004734

- 4 -

5-121

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

8-6

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

The radio going dead at the cell phone

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

Volunteer fireman

IF FIRE/EMT, ASK:

Is your position...

1 paid or

2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date)

9/17/05 at (time) 3:45

INTERVIEWER SIGNATURE:

Kimberly C Dunn

MOT 004735

- 1 -

5-122

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

Computer prompt

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Windows

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004736

-2-

5-122

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Door bell

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Any one its a regular doorbell

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004737

- 3 -

5-122

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

I don't know

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004738

- 4 -

5-122

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

8-1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Radio battery

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

I don't know

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

officer

IF FIRE/EMT. ASK:

Is your position...

- ☒ paid or
☐ volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date) *9/7/25* at (time) _____.

INTERVIEWER SIGNATURE:

Kimberly C. Dunn

MOT 004739

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*The sound when you log onto
the computer.*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Windows

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Simple dark bell

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*I can't think of one I'm sure
quite a few people use this part.*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004741

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

Stand computer .

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Just the little hand calculator

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004742

5-123

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

VOICE: Please press pause now.

8-1

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Dead battery in the radio ..

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

Air fighter

IF FIRE/EMT, ASK:

Is your position...

- 1 paid or
2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date) 9/16/05 at (time) 12:25.

INTERVIEWER SIGNATURE:

Kimberly C. Dunn

MOT 004743

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

Computer

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

I'm not sure probably Windows

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Door bell.

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Not sure

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004745

5-124

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

Don't Know

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004746

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

1-1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Call Radio

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

M Airda.

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

Officer

IF FIRE/BMT, ASK:

Is your position...

- 1 paid or
2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date)

9/6/08

at (time)

3:50

INTERVIEWER SIGNATURE:

Kimberly C. Dunn

MOT 004747

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

The Computer music

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Am not sure.

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Door beep

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Don't know

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004749

5-125

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

Don't Know

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004750

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

1-1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

CB our Radio signal

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Motarola

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

Officer

IF FIRE/EMT, ASK:

Is your position...

- 1 paid or
2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date)

9/6/05 at (time) 6:40.

INTERVIEWER SIGNATURE

Kimberly Dunn

MOT 004751

- 1 -

5-126

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

The computer start up sounds

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Don't know

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

-2-

5-126

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Door bell

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Don't know

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004753

-3-

5-126

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

Don't Know

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004754

- 4 -

5-126

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

1-1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

This ones the ball & chain the radio
call when you have a call

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Motorola

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

Officer

IF FIRE/EMT, ASK:

Is your position...

1 paid or

2 volunteer?

I (INTERVIEWER PRINT FULL NAME) Kimberly Dunn

verify that I conducted this interview on (date) 9/17/05 at (time) _____

INTERVIEWER SIGNATURE: Kimberly Dunn

MOT 004755

- 1 -

5-127

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

The microsoft; window tones

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Windows

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

-2-

5-127

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Door bell

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Have not got a clue!

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004757

- 3 -

5-127

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

*am not sure sounds like some kind
of letter going back and forth*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

definitely don't know

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004758

-4-

5-127

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

2-6

~~2-6~~

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Nextel chirp

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:
You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Nextel

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

Officer

IF FIRE/EMT, ASK:

Is your position...

☒ paid or

☐ volunteer?

I (INTERVIEWER PRINT FULL NAME) Kimberly Dunn

verify that I conducted this interview on (date) 9/7/05 at (time) 6:

INTERVIEWER SIGNATURE: Kimberly C. Dunn

MOT 004759

- 1 -

5-128

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

Micic Soft

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

-2-

5-128

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Don't keep

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:
You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004761

Confidential - Attorneys' Eyes Only -
Subject to Protective Order in TTAB
Opp. No. 91/161,817

-3-

5-128

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

*I'm not sure it sounds like a man's
copies*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

No I'm not sure what it is

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004762

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Subject to Protective Order in TTAB
Opp. No. 91/161,817

- 4 -

5-128

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

1-1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Motorola Radio

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT, ASK:

Is your position...

☒ paid or

☐ volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Brown

verify that I conducted this interview on (date) 9/8/05 at (time) 3:00.

MOT 004763

INTERVIEWER SIGNATURE:

Kimberly Brown

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Subject to Protective Order in TTAB
Opp. No. 91/161,817

APPENDIX D
RESUME OF MICHAEL RAPPEPORT

MOT 004764

**Confidential - Attorneys' Eyes Only -
Subject to Protective Order in TTAB
Opp. No. 91/161,517**

DR. MICHAEL RAPPEPORT

Dr. Rappeport has worked in market and survey research areas for more than 35 years, the last 27 as a partner of R L Associates. As part of his function he has made more than 200 appearances as an expert witness in legal cases at trial and/or through deposition. His testimony has dealt with statistics and statistical analysis, marketing, and public opinion in cases in such disparate areas as trademark infringement, libel, damages for failure to fulfill a contract, and reapportionment. He has also testified as an expert in a number of quasi-legal proceedings before a range of public boards, agencies and regulatory bodies.

Education

B.S. Physics, RPI, Troy, New York 1957

M.S. Electrical Engineering, Yale University, New Haven 1958

PH.D. Statistics, New York University, 1968

Professional positions

1975 - present: Founding partner, R L Associates, survey research and consulting firm

Dr. Rappeport has had wide experience both in the direction of all kinds of surveys of human populations and as a consultant in statistical, strategy planning and survey research areas. Two areas in which he has been particularly active are studies on public policy, and studies for use in litigation. Along with responsibility for the management of the firm, Dr. Rappeport has direct responsibility for all statistical aspects of the firm's work. In the main this encompasses sample design and the use of a wide variety of statistical analysis techniques. He has designed projectable national and regional probability samples of all civilian non-institutional telephone households, and a very wide range of specialized samples of all types.

1969 - 1972: 1973 - 1975: Vice president and chief statistician, Opinion Research Corporation, Princeton, New Jersey

1972 - 1973: Vice president, Response Analysis Corp. Princeton, New Jersey

1959 - 1969: Supervisor, Bell Telephone Laboratories, Holmdel, New Jersey

MOT 004765

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Opp. No. 91/161,817

Teaching

At various times, Dr. Rappeport has taught or conducted guest lectures in a number of colleges and universities. He has been an adjunct instructor in both Research Methods and Political Public Opinion at Rutgers University, and taught a course in Marketing at Rider College.

Articles and Speeches

Over the course of the last 25 years, Dr. Rappeport has written approximately 40 published articles, and given more than 70 speeches. He has spoken at a number of meetings of legal organizations including:

Faculty member – ABA-ALI seminar on Dilution – February 2004

Participation in a 2003 panel of the Amer. Intellectual Property Law Assoc.

Participation in a 2001 panel of the Advanced Practitioners Prog of the Intl. Trademark Assoc.

A 1998 speech to the Bar for the Federal Circuit

Witness at a mock trial at the Feb. 1998 Meeting - American Bar Association Antitrust Section

A 1996 speech to the New Jersey Intellectual Property chapter of the Inns of Court.

A 1995 panel presentation for the CLE program, American Bar Assoc. - Antitrust Section.

A 1995 speech to the CLE program, American Bar Assoc. - Intellectual Property Section

Witness at a mock trial at the 1995 meeting of the American Intellectual Property Law Assoc.

Among the wide cross-section of other types of organizations where he has spoken at an annual or other major meeting are Planned Parenthood Federation of America, United States Trademark Association, Travel and Tourism Research Association, Newspaper Research Council, Pennsylvania Hospital Association, and New Jersey Political Science Association.

Other

Dr. Rappeport is currently listed in Who's Who in the East, and several other similar publications dealing with the Legal Profession, Social Sciences and Marketing. He has served on a variety of civic and professional boards. Among those most directly related to his professional activities:

Editorial Board of the "Trademark Reporter" 1993 - 1996, 1997 - 2004

Board of Advisors - Citizens Committee on Bio-Medical Ethics 1986 - 1994

New Jersey State Bio-Ethics Task Force on Public and Professional Education - 1989- 1992

Board of Directors, American Association for Public Opinion Research, 1976 - 1980; Standards

Chairman 1979 - 1980

MOT 004766

Cases in which Michael Rappeport has appeared either by deposition or in trial as an expert witness 2001-2005. Date shown is first appearance. Unless noted all cases listed were in United States District Courts.

2005

June Deposition – The City of New York v. Albert Elovitz – Southern District New York
April Deposition and August Trial – Dosatron Intl v Agri-Pro – Middle District Florida
April Testimony Deposition – Franklin Loufrani v Wal-Mart Stores – Trademark Trial and Appeal Board
March Deposition – In the Matter of Certain Ink Markers – U.S. International Trade Commission
March Deposition – Mylan v Procter & Gamble – Southern District New York
Feb. and June Depositions – Toyota Motor Sales v Aliments Lexus – Eastern District New York

2004

August Trial – Catamount v Microsoft – District of Vermont
Feb. Deposition – Weight Watchers v Luiginos – Southern Dis NY
Feb. Trial – Trettco v HDS New England – Dis. of Massachusetts

2003

Dec. Deposition – Georgia Pacific v Procter & Gamble – No. Dis. of Georgia
Dec. Deposition and Feb 2004 Trial – Trettco v HDS New England – Dis. of Massachusetts
Sept. Deposition – Winn v. Eaton – Central Dis. of California
Aug. Deposition – In the matter of certain Agricultural Vehicles – Intl. Trademark Commission
Feb. Deposition – Microsoft v Lindows.com – West. Dis. Of Washington
Jan. Deposition and Feb. Trial – Pharmacia v GlaxoSmithKline II – District of New Jersey
Jan. Trial – Ardex v Chemrex – Western District Of Pennsylvania
Jan Deposition and Feb. Trial – Inliten v Santa's Best – Southern District Ohio

2002

Dec Deposition – Pharmacia v GlaxoSmithKline – District of New Jersey
Nov. Deposition – Maui v Del Montc – Central District California
Oct. Deposition and Nov. Trial – Spotless v A&E – E.D.N.Y.
Sept. Deposition – Twentieth Century Fox v Marvel Enterprises, Tribune Entertainment – SDNY
July Deposition – Philips Oral Healthcare v Salton – Western District of Washington
June Deposition and July Trial – Scotts v United Industries – So. District Florida
June Deposition – Eurotech v Cosmos European Travel – E. D. Virginia
April Testimony and December rebuttal Deposition – QVC v Weick Family Inc. – TTAB
April Deposition – Astra Zeneca v Ferndale – Eastern District Michigan
Feb. Deposition and August 2004 trial – Catamount v Microsoft – District of Vermont
February Trial – Koala Corp v Prince Lionheart – District of Colorado
February Trial – Morelli v Tiffany – Eastern District of Pennsylvania

2001

November Deposition – J&J Snackfoods v Earthgrains – District of New Jersey
November Deposition – Nissan Motors v Nissan Computer – Central District of California
November Trial Affidavit – ABC (Ford West) v Autonation – Central District of California
October Deposition – Qwest Communications v Worldquest Networks – Eastern. District of Virginia
October Deposition and February 2002 Trial – National Distillers v Refreshment Brands – SDNY
July Deposition and Nov. Testimony – Sara Lee v Kayser-Roth – Trademark Trial & Appeal Board
May Trial – SBCH v J&J Merck – Southern District of New York
February Deposition – Isenbeck v Beck – Southern District of New York
January Deposition – Cache v M.Z. Berger – Southern District of New York

MOT 004767

List of publications of Michael Rappeport 1992-2005

The Democratic Ethos and the Positive Sum Society – Society – July-August 2003

A Rejoinder to a Critique – The Trademark Reporter; November-December 2002

Litigation Surveys – Social Science as Evidence – The Trademark Reporter; July-August 2002

Applying Daubert; National Law Journal, January 21, 2002

When Consumer Beliefs are Based on a Court's Intuition - One More Issue Arising From Conopco (with Sandra Kornstein-Cohen): The Trademark Reporter; March-April 1997

Is Judaism Splitting Into Two religions; Sh'ma; April 1996

The Role of the Survey "Expert" - A Response to Judge Posner; The Trademark Reporter, March-April 1995

The Future of the American Jewish Community; Sh'ma; December 1994

The Patient Self Determination Act; Implementation of the Law in Nursing Homes; (co-author); Paper presented at the 122nd Annual Meeting of the American Public Health Association November, 1994

Condition Critical; (co-author); Paper presented at the 1994 Annual Meeting of the American Society of Law, Medicine and Ethics; October 1994

Statistically Based Evidence; National Law Journal, Op-ed Page; August 1993

Prognosis Good for Lower Medical Care Inflation; Wall Street Journal Op-Ed page; February, 1993

Predicting the Election - Why Clinton Will Win; The Sunday Record (Bergen County, New Jersey); August 1992. In addition Dr. Rappeport was a columnist on a weekly basis for the Bergen Record throughout much of 1991. Columns dealt with a wide range of statistical and public opinion issues from crime in New Jersey to the proper reporting of retail sales.

MOT 004768

Confidential - Attorneys' Eyes Only -
Subject to Protective Order in TTAB
Opp. No. 91/161,817

EXHIBIT 4

Nextel Communications, Inc., Opposer, v. Motorola, Inc., Applicant
Opposition No.: 91/161,817
Application No.: 78/235,618
Mark: Sensory Mark (911 Hz Tone)

Exhibit 4 in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2005-12-15 16:56:08 ET

Serial Number: 74022482 [Assignment Information](#)

Registration Number: 1620415 [Assignment Information](#)

Mark : (SENSORY MARK ONLY)

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2001-03-15

Filing Date: 1990-01-25

Transformed into a National Application: No

Registration Date: 1990-10-30

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-08-12

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. MCI COMMUNICATIONS CORPORATION

Address:

MCI COMMUNICATIONS CORPORATION
1133 19TH STREET, N.W.
WASHINGTON, DC 20036
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 038

LONG DISTANCE TELEPHONE SERVICES

First Use Date: 1989-04-20

First Use in Commerce Date: 1989-04-20

Basis: 1(a)

ADDITIONAL INFORMATION

Description of Mark: THE MARK CONSISTS OF FOUR HARMONICALLY RELATED TONES WHICH ARE SUMMED TOGETHER IN A SUCCESSIVE MANNER TO PRODUCE A UNIQUE CHIME SOUND THAT IS USED AS A PROMPT TONE TO THE TELEPHONE USER.

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2001-03-15 - First renewal 10 year

2001-03-15 - Section 8 (10-year) accepted/ Section 9 granted

2000-10-31 - Combined Section 8 (10-year)/Section 9 filed

1997-02-13 - Section 8 (6-year) accepted & Section 15 acknowledged

1996-10-15 - Section 8 (6-year) and Section 15 Filed

1994-08-19 - Section 7 new certificate issued

1993-11-02 - Section 7 new certificate issued

1992-11-10 - Request for new certificate filed

1992-11-10 - Request for new certificate filed

1992-09-29 - Post Registration action mailed - Section 7

1991-09-12 - Section 7 correction issued

1991-04-19 - Section 7 correction issued

1991-02-22 - Section 7 correction issued

1991-01-04 - Section 7 correction issued

1990-10-30 - Registered - Principal Register

1990-08-07 - Published for opposition

1990-07-11 - Notice of publication

1990-07-10 - Notice of publication

1990-07-07 - Notice of publication

1990-04-30 - Approved for Pub - Principal Register (Initial exam)

CORRESPONDENCE INFORMATION

Correspondent

ANNE L. CORNELIUS
MCI WORLDCOM BRANDS, L.L.C.
1133 NINETEENTH STREET, N.W.
WASHINGTON, DC 20036

EXHIBIT 5

Nextel Communications, Inc., Opposer, v. Motorola, Inc., Applicant
Opposition No.: 91/161,817
Application No.: 78/235,618
Mark: Sensory Mark (911 Hz Tone)

Exhibit 5 in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2005-12-15 16:59:59 ET

Serial Number: 75550755 Assignment Information

Registration Number: 2468736 Assignment Information

Mark : (SENSORY MARK ONLY)

Standard Character claim: No

Current Status: Registered.

Date of Status: 2001-07-17

Filing Date: 1998-09-10

Transformed into a National Application: No

Registration Date: 2001-07-17

Register: Principal

Law Office Assigned: LAW OFFICE 102

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-08-12

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. SPEECHWORKS INTERNATIONAL, INC.

Address:

SPEECHWORKS INTERNATIONAL, INC.

695 Atlantic Avenue Third Floor

Boston, MA 02201

United States

Legal Entity Type: Corporation

State or Country of Incorporation: Massachusetts

GOODS AND/OR SERVICES

International Class: 009

interactive speech processing software comprising a speech recognizer, preconfigured speech processing modules comprised of add on software used for speech recognition and voice activation, electronic databases that are recorded on computer media or downloadable from computer networks in the field of speech recognition and voice activation, and interactive speech systems composed of computer software used to route

calls and direct callers to interactive information and to conduct business transactions through voice activated means, and associated software development tools, utility software and libraries in the nature of electronic databases that are either recorded on computer media or downloadable from computer networks in the field of speech recognition and voice activation

First Use Date: 1995-12-00

First Use in Commerce Date: 1995-12-00

Basis: 1(a)

ADDITIONAL INFORMATION

Description of Mark: The mark consists of percolation sounds which follow voice responses to pre-recorded prompts.

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2001-07-17 - Registered - Principal Register
2001-04-24 - Published for opposition
2001-04-11 - Notice of publication
2000-11-14 - Approved for Pub - Principal Register (Initial exam)
2000-11-03 - Examiner's amendment mailed
2000-05-03 - Final refusal mailed
1999-10-12 - Communication received from applicant
1999-04-09 - Non-final action mailed
1999-04-01 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

Joanne Ludovici-Lint (Attorney of record)

JOANNE LUDOVICI-LINT
MCDERMOTT, WILL & EMERY
600 13TH STREET, N.W
WASHINGTON, D.C. 20005-3096

EXHIBIT 6

Nextel Communications, Inc., Opposer, v. Motorola, Inc., Applicant
Opposition No.: 91/161,817
Application No.: 78/235,618
Mark: Sensory Mark (911 Hz Tone)

Exhibit 6 in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2005-12-15 17:18:16 ET

Serial Number: 76152167

Registration Number: 2685338

Mark : (SENSORY MARK ONLY)

Standard Character claim: No

Current Status: Registered.

Date of Status: 2003-02-11

Filing Date: 2000-10-23

Transformed into a National Application: No

Registration Date: 2003-02-11

Register: Principal

Law Office Assigned: LAW OFFICE 107

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-08-12

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. EasyTel

Address:

EasyTel
22647 Ventura Blvd. Suite 1004
Woodland Hills, CA 91364
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Nevada

GOODS AND/OR SERVICES

International Class: 038

Notification service that funds have been deposited into recipient's account, namely a bank account, checking account, electronic commerce account, credit/debit card account, said notification being telephonic or through a world wide computer network

First Use Date: 1999-09-01

First Use in Commerce Date: 1999-09-01

Basis: 1(a)

ADDITIONAL INFORMATION

Description of Mark: The mark is the sound of a ringing cash register

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2003-02-11 - Registered - Principal Register
2002-11-19 - Published for opposition
2002-10-30 - Notice of publication
2002-10-07 - Approved for Pub - Principal Register (Initial exam)
2002-10-04 - Examiner's amendment mailed
2002-10-03 - Case file assigned to examining attorney
2002-08-28 - Previous allowance count withdrawn
2002-03-07 - Approved for Pub - Principal Register (Initial exam)
2002-02-28 - Previous allowance count withdrawn
2002-02-22 - Approved for Pub - Principal Register (Initial exam)
2002-01-07 - Case file assigned to examining attorney
2001-12-18 - Communication received from applicant
2001-12-17 - Communication received from applicant
2001-06-14 - Non-final action mailed
2001-03-29 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

Robert G. Rosenthal (Attorney of record)

ROBERT G. ROSENTHAL

ROSENTHAL & PUTTERMAN
5856 FARINGDON PL STE 200
RALEIGH NC 27609-3931

EXHIBIT 7

Nextel Communications, Inc., Opposer, v. Motorola, Inc., Applicant
Opposition No.: 91/161,817
Application No.: 78/235,618
Mark: Sensory Mark (911 Hz Tone)

Exhibit 7 in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2005-12-15 17:19:09 ET

Serial Number: 76189600 Assignment Information

Registration Number: 2798332 Assignment Information

Mark : (SENSORY MARK ONLY)

Standard Character claim: No

Current Status: Registered.

Date of Status: 2003-12-23

Filing Date: 2001-01-02

Transformed into a National Application: No

Registration Date: 2003-12-23

Register: Principal

Law Office Assigned: LAW OFFICE 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-08-12

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. MUSICMATCH, Inc.

Address:

MUSICMATCH, Inc.
16935 West Bernardo Drive, #270
San Diego, CA 92127
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Washington

GOODS AND/OR SERVICES

International Class: 009

Computer software for facilitating analysis of musical preferences and interests, providing, storing and organizing musical recordings and selections, downloading, recording and playing of music samples and full recordings, and providing access to sites on a global computer network

First Use Date: 2001-01-10

First Use in Commerce Date: 2001-01-10

Basis: 1(a)

International Class: 035

Online ordering in the field of music samples and full recordings; online retail stores featuring sound recordings; online retail services in the field of music featuring analysis of musical preferences and interests of website users and provision of musical recordings and selections that allows users to download and playback music samples and full recordings and provides access to other websites

First Use Date: 2001-01-10

First Use in Commerce Date: 2001-01-10

Basis: 1(a)

International Class: 041

Providing information on music releases, reviews, concerts, concert tours, musical artists, the music industry, and recording and playback equipment; providing information about music based on personal preferences by means of analysis of musical preferences and interests of website users

First Use Date: 2001-01-10

First Use in Commerce Date: 2001-01-10

Basis: 1(a)

ADDITIONAL INFORMATION

Description of Mark: The MUSICMATCH startup sound consists of a 4.4 second musical phrase. The time signature of the phrase is 4/4 with an approximate tempo of 80 bpm. The phrase starts with a pianissimo string chord whose main keys are C5, F#5, and G5. The chord crescendos to forte in ~.8 seconds at which time a 60-80Hz bass note hits. The bass note is sustained for ~.8 seconds. Overlying the string chord are synthesized pizzicato 1/8th note triplets beginning at .4 seconds and ending at ~1.2 seconds. The sequence of notes is D7, C7, A6, G6. While the bass note is sustained (~ 1 second marker) the string sound, mentioned previously, changes to an A major chord. Using the same string sound, underlying the A major chord is a sequence of 1/8th notes. The sequence is F#4, E4, A4. Finally, using a synthesized pizzicato sound, two quarter notes are sounded. The quarter note tones and second markers are, A4 at 1.8 seconds and D5 at 2.8 seconds, respectively. The sound fades to zero volume starting at 3.5 seconds and ending at 4.4 seconds.

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-11-07 - TEAS Change of Correspondence Received

2003-12-23 - Registered - Principal Register

2003-09-30 - Allowed for Registration - Principal Register (SOU accepted)

2003-07-11 - Statement of use processing complete

2003-07-11 - Extension 1 granted

2003-06-16 - Amendment to Use filed
2003-06-16 - Extension 1 filed
2003-06-18 - PAPER RECEIVED
2002-12-17 - Notice of allowance - mailed
2002-10-15 - PAPER RECEIVED
2002-09-24 - Published for opposition
2002-09-18 - TEAS Change of Correspondence Received
2002-09-04 - Notice of publication
2002-07-30 - PAPER RECEIVED
2002-01-22 - Approved for Pub - Principal Register (Initial exam)
2001-10-18 - Communication received from applicant
2001-04-23 - Non-final action mailed
2001-04-17 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

LISA M MARTENS (Attorney of record)

Carmen Arenal
Yahoo! Search Marketing
3rd Floor
74 No. Pasadena Ave.
Pasadena CA 91103
Phone Number: (626) 229-5479

EXHIBIT 8

Nextel Communications, Inc., Opposer, v. Motorola, Inc., Applicant
Opposition No.: 91/161,817
Application No.: 78/235,618
Mark: Sensory Mark (911 Hz Tone)

Exhibit 8 in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2005-12-15 17:16:18 ET

Serial Number: 78227515

Registration Number: 2827972

Mark : (SENSORY MARK ONLY)

Standard Character claim: No

Current Status: Registered.

Date of Status: 2004-03-30

Filing Date: 2003-03-19

Transformed into a National Application: No

Registration Date: 2004-03-30

Register: Principal

Law Office Assigned: LAW OFFICE 102

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-08-12

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. AWS Convergence Technologies, Inc.

Address:

AWS Convergence Technologies, Inc.

2-5 Metropolitan Court

Gaithersburg, MD 20878

United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 009

Software for notifying consumers of live weather conditions, weather forecasts, weather alerts, and other weather related information by means of a global computer network

First Use Date: 2000-01-00

First Use in Commerce Date: 2000-04-00

<http://tarr.uspto.gov/servlet/tarr?regser=registration&entry=2827972>

12/15/2005

Basis: 1(a)

ADDITIONAL INFORMATION

Description of Mark: The mark consists of a series of five chirps similar to the chirping sound of a cricket.

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2004-03-30 - Registered - Principal Register
2004-01-06 - Published for opposition
2003-12-17 - Notice of publication
2003-11-24 - Approved for Pub - Principal Register (Initial exam)
2003-11-24 - EXAMINERS AMENDMENT E-MAILED
2003-11-24 - Previous allowance count withdrawn
2003-11-21 - Previous allowance count withdrawn
2003-10-16 - Approved for Pub - Principal Register (Initial exam)
2003-09-22 - Communication received from applicant
2003-09-22 - PAPER RECEIVED
2003-09-05 - Non-final action e-mailed
2003-08-22 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

Randel S. Springer (Attorney of record)

Randel S. Springer
Womble Carlyle Sandridge)& Rice, PLLC
One West Fourth Street
Winston-Salem NC USA 27101

Phone Number: (336) 721-3747

Fax Number: (336) 726-6991

EXHIBIT 9

Nextel Communications, Inc., Opposer, v. Motorola, Inc., Applicant
Opposition No.: 91/161,817
Application No.: 78/235,618
Mark: Sensory Mark (911 Hz Tone)

Exhibit 9 in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment

CONFIDENTIAL - ATTORNEYS' EYES ONLY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
NEXTEL COMMUNICATIONS, INC., :
Opposer :
v. : App. No. 78/235,618
MOTOROLA, INC., :
Applicant :
-----X

Deposition of ALLISON O'REILLY

Washington, D.C.

Tuesday, July 26, 2005

9:05 a.m.

Job No.: 22-60399

Pages 1 - 65

Reported by: Nancy Bond Rowland

1 Deposition of ALLISON O'REILLY, held at the
2 offices of:

3
4 Crowell & Moring
5 1001 Pennsylvania Avenue, N.W.
6 Washington, D.C.
7

8 Pursuant to agreement, before Nancy Bond
9 Rowland, Registered Professional Reporter and Notary
10 Public in and for the District of Columbia.
11
12
13
14
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25

A P P E A R A N C E S

ON BEHALF OF OPPOSER:

MICHAEL H. JACOBS, ESQUIRE

WILLIAM J. SAUERS, ESQUIRE

CROWELL & MORING

1001 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

(202) 624-2500

ON BEHALF OF APPLICANT:

THOMAS M. WILLIAMS, ESQUIRE

BRINKS, HOFER, GILSON & LIONE

NBC Tower - Suite 3600

455 N. Cityfront Plaza Drive

Chicago, IL 60611-5599

(312) 321-4200

ALSO PRESENT: Cindy Lin

C O N T E N T S

EXAMINATION OF ALLISON O'REILLY

PAGE

By Mr. Williams

5

E X H I B I T S

(Attached to the Transcript)

DEPOSITION EXHIBIT

PAGE

1 - Applicant's Notice of Deposition.

16

2 - Applicant's First Notice of Deposition.

17

3 - Notice of Opposition.

22

4 - Opposer's Response to Applicant's First Set
of Requests for Production of Documents and
Things.

55

5 - Letter dated April 29, 2005 and attachments.

56

6 - Opposer's Response to Applicant's First Set
of Interrogatories.

56

7 - Mark - CHRRRP.

60

P R O C E E D I N G S

ALLISON O'REILLY

having been duly sworn, testified as follows:

EXAMINATION BY COUNSEL FOR APPLICANT

BY MR. WILLIAMS:

Q Good morning, Miss O'Reilly. I'm Tom Williams. I'm here on behalf of Motorola.

Could you please state your name for the record?

A Allison Scherry O'Reilly.

Q Do you have any maiden names or other names you've gone by over the years?

A My maiden name is Scherry.

Q Okay. What's your address?

A Home?

Q Yes.

A 1178 Randolph Road, McLean, Virginia 22101.

Q And your business address?

A 2003 Edmund Halley Drive, Reston, Virginia 20191.

Q Have you ever testified at a deposition before?

A I have not.

Q Have you ever testified at a trial before?

A I have not.

1 Q Is there any reason why you cannot give
2 truthful and accurate testimony here today?

3 A Absolutely not.

4 Q Do you have a college degree?

5 A Yes.

6 Q From what school?

7 A University of Maryland.

8 Q In what year did you receive that?

9 A 1982.

10 Q What was your major?

11 A Marketing.

12 Q Did you have any minors?

13 A No.

14 Q Do you have any graduate degrees?

15 A I do not.

16 Q Who is your current employer?

17 A Nextel Communications.

18 Q And what is your current job title?

19 A Director - promotions and retail marketing.

20 Q How long have you had that title?

21 A Since last June of 2004.

22 Q What do your job duties entail in that
23 position?

24 A I am responsible for all offer-driven
25 advertising. Underneath the people who work for me

1 manage packaging, collateral, point of purchase
2 materials, promo television, radio.

3 Q Who is your supervisor?

4 A Mary Matthews.

5 Q And what's her title?

6 A Vice-president - mass marketing
7 communications.

8 Q Does she have the same business address as
9 you?

10 A Yes.

11 Q Offer-driven advertising you mentioned?

12 A Yes.

13 Q Can you explain that?

14 A Sure. Anything that has a price point in it
15 as opposed to brand marketing.

16 Q Are you involved in brand marketing at all?

17 A Not per se other than it's within the same
18 group.

19 Q Who works with brand marketing in your group?

20 A Right now the person has left the company, so
21 it's Mary Matthews.

22 Q You referred to collateral materials. What
23 was that?

24 A Brochures, electronic collateral.

25 Q What's an example of electronic collateral?

1 A An e-flier that's posted online that someone
2 can download and customize with their call to action.

3 Q Where online would that be placed?

4 A We have a site from Nextel that's called
5 inc and snc, and our indirect dealers can get it or our
6 sales force can get it. They're customizable, again
7 downloadable fliers.

8 Q Is there audio and video in those fliers?

9 A No.

10 Q Just video?

11 A No. It's actually just a printout.

12 Q Printed text?

13 A Yes.

14 Q Images?

15 A Yes.

16 Q What did your refer to when you mentioned
17 point of purchase advertising?

18 A POP in a store environment, the posters and
19 banners and so forth that are used within a Nextel
20 retail store or authorized representative.

21 Q And promotional television and radio, is that
22 simply TV and radio advertising?

23 A Yes. Promotional television is when there's
24 a call to action. Again, there's a telephone number, a
25 price point versus brand advertising that is more about

1 the brand itself.

2 Q What would be an example of call to action
3 advertising?

4 A Call a certain 800 number, visit Nextel.com
5 or visit a store near you.

6 Q Would that be for say a limited time offer?

7 A Sure. Yes.

8 Q What other types of call to action
9 advertising would there be?

10 A That's mostly it. They're done monthly,
11 quarterly, promoting the latest offer available.

12 Q Prior to accepting your position as director
13 of promotions and retail marketing, did you have any
14 other previous positions within Nextel?

15 A Absolutely.

16 Q And working backwards from your present
17 position, what positions have you held?

18 A Prior to becoming director I was senior
19 manager of advertising, and I was responsible for again
20 the point of purchase materials in store as well as all
21 advertising to support the purchase of our Nextel
22 retail stores and the media plans for that.

23 Q When did you hold that position?

24 A Probably from 19 -- I'm sorry -- 2002 to
25 2004, maybe 2001 to 2004.

1 Q Prior to senior marketing --

2 A Manager.

3 Q -- manager of advertising, any positions in
4 Nextel prior to that?

5 A Yes. I was manager of trade shows, and I
6 also developed collateral packaging, user guides, and I
7 started with Nextel in December of 1997.

8 Q So you held that position from approximately
9 '97 to 2000?

10 A I did trade shows and advertising for
11 probably maybe a year and a half, two years, and then
12 prior to that I did collateral and packaging when I
13 joined.

14 Q When did you start with Nextel?

15 A December '97.

16 Q Where were you prior to Nextel?

17 A I worked at a marketing firm in Boston.

18 Q What was the name of that firm?

19 A Irma Mann, M-a-n-n, Strategic Marketing.

20 Q Did you go there from college?

21 A No. I went there after I started my career
22 at MCI, and then I moved to Boston, and I worked at ITT
23 Sheraton Hotels for two years. They had a layoff, and
24 I went to work for an advertising agency which was Irma
25 Mann Strategic Marketing.

1 Q How long were you with MCI?

2 A ~~Eight~~ ^{Seven} years, 1982 to 1989.

3 Q What positions did you hold there?

4 A Various marketing, advertising, sales support
5 roles.

6 Q What did you do to prepare for today's
7 deposition?

8 MR. JACOBS: I'll caution you, Miss O'Reilly,
9 not to divulge any communications with counsel, but
10 otherwise you can answer.

11 A Really just reviewed what I have -- what I'm
12 aware of from a Nextel perspective.

13 Q Other than the lawyers, who did you speak
14 with?

15 A I spoke to someone in our competitive
16 intelligence group.

17 Q And who was that?

18 A Dennis Newton and Milan ^{Detweiler} ~~Detwiler~~.

19 Q You spoke with those two individuals?

20 A Yes.

21 Q Anyone else?

22 A No.

23 Q Where is the competitive intelligence group
24 located?

25 A Same address as me.

1 Q What does the competitive intelligence group
2 do?

3 A They do a lot of tracking of information and
4 research.

5 Q What sort of information and research?

6 A Tracking of advertising spent, current
7 advertising, and marketing initiatives.

8 Q Because it's called competitive intelligence,
9 I'm assuming it relates to competitors, is that
10 correct?

11 A Yes.

12 Q Which competitors would that be?

13 A Carriers.

14 Q Can you give me some examples of carriers?

15 A Verizon, T-Mobile, Cingular.

16 Q Any hardware manufacturers?

17 A No.

18 Q Anything involving Motorola?

19 A No.

20 Q Why did you speak with them?

21 A I wanted to reconfirm exactly what they
22 tracked to confirm that it was just carrier specific.

23 Q Did you exchange any correspondence, any
24 e-mails with Mr. Newton or Mr. ^{Detweiler}~~Detweiler~~?

25 A No.

1 Q Telephone conversation?

2 A No.

3 Q In-person?

4 A Yes.

5 Q Did you take any notes?

6 A No.

7 Q How long was that conversation?

8 A 10, 15 minutes.

9 Q Did you review any documents?

10 A No.

11 Q How about backing up in preparing for today's
12 deposition, did you review any documents?

13 A Just what was presented.

14 Q By your lawyer?

15 A Yes.

16 Q Do you recall what those were?

17 A The deposition document, my document with my
18 name on it. I don't recall what that's called. And
19 one other document that, I'm sorry, I don't recall.

20 Q Do you recall if it had a caption from this
21 case on it?

22 A I believe it did.

23 Q Did you sign a release or any paperwork
24 relating to a protective order in this case?

25 A I did not.

1 Q Did you review your files in preparing for
2 today's deposition?

3 A What is my files?

4 Q Any files that you maintain in your office.

5 A I didn't have anything per se to review.

6 Q Did you give any documents to the lawyers?

7 A I did.

8 Q Do you recall what you gave them?

9 A Trade show information.

10 Q Anything else?

11 A And some names of some other people.

12 Q Do you recall those names?

13 A I don't off the top of my head.

14 Q Were they other Nextel employees?

15 A Yes.

16 Q Were they people in your group?

17 A Some, yes.

18 Q What type of trade show information did you
19 give them?

20 A Trade shows that we attend as a company.

21 Q Were they brochures from the trade shows?

22 A No. They were just a list of trade shows, a
23 calendar so to speak.

24 Q A calendar prepared by Nextel?

25 A Yes.

1 Q Do you recall which trade shows would have
2 been listed on that calendar?

3 A It was the entire calendar, so it could have
4 been transportation shows, any vertical markets that we
5 support, manufacturing.

6 Q What was the time period for that calendar?

7 A I believe it was the last few years.

8 Q And when did you give that document to your
9 lawyers?

10 A The spring of this year, March perhaps.

11 Q 2005?

12 A Yes.

13 Q Are you aware of Nextel's deposition of Mr.
14 Klein for Motorola that occurred last week?

15 A I'm aware one occurred.

16 Q Who informed you of that?

17 A My lawyer.

18 Q Did you discuss it with anyone else?

19 A Absolutely not.

20 Q Did you read a copy of the transcript of that
21 deposition?

22 A I did not.

23 Q Did you read any excerpts from that
24 deposition?

25 A Nothing.

1 Q Any summaries?

2 A Nothing.

3 Q Did you exchange any e-mails or
4 correspondence with the lawyers about that deposition?

5 A Nothing.

6 Q Did you watch a video of it?

7 A No.

8 MR. WILLIAMS: I'm going to mark this as the
9 first exhibit.

10 (Deposition Exhibit 1 was marked for
11 identification and was attached to the transcript.)

12 BY MR. WILLIAMS:

13 Q This is Applicant's Notice of Deposition of
14 Miss Allison O'Reilly. Have you seen this document
15 before?

16 A I believe I saw this yesterday.

17 Q This has been marked as Exhibit 1. Did you
18 discuss it with anyone?

19 A No.

20 Q Did you discuss it with the lawyers?

21 A It wasn't really discussed. It was just
22 presented, and I reviewed it.

23 Q By fax or e-mail?

24 A Face-to-face.

25 MR. WILLIAMS: I'm going to mark the second

1 exhibit. This will be Exhibit Number 2.

2 (Deposition Exhibit 2 was marked for
3 identification and was attached to the transcript.)

4 BY MR. WILLIAMS:

5 Q This is Applicant's First Notice of
6 Deposition of Opposer Pursuant to Federal Rule of Civil
7 Procedure 30(b)(6). Have you seen this document
8 before?

9 A I believe this is the document that I saw,
10 yes.

11 Q When did you first see this?

12 A Sometime probably in March of 2005.

13 Q At the bottom of the first page you'll see a
14 caption Deposition Categories. Do you see that?

15 A Yes.

16 Q Could you briefly review the paragraphs
17 numbered 1 through 21.

18 A Yes.

19 Q Have you been designated to testify in
20 Nextel's behalf with respect to each of these
21 paragraphs?

22 A Yes.

23 Q Have you discussed these categories with
24 anyone?

25 A No, other than the lawyers.

1 Q When did you have those discussions?

2 A Again, starting in March of 2005.

3 Q Did you do any research to prepare to testify
4 in these categories?

5 A Again, I spoke to the competitive
6 intelligence team, but other than that, just knowledge
7 that I'm aware of.

8 Q Did you specifically refer to any documents
9 in response to these 21 paragraphs?

10 A No.

11 Q You had conversations with the competitive
12 intelligence people and the lawyers?

13 A Yes. If I had a question or something that I
14 was not the expert at, I did reach out, but again did
15 not share why I was looking for that information.

16 Q Who did you reach out to?

17 A The trade show team to gather the trade show
18 information.

19 Q Anyone else?

20 A I don't believe so.

21 Q How about sales and advertising numbers, did
22 you reach out to anyone to discuss those topics?

23 A Well, sales are not within my team. Yes, I
24 did. I reached out to someone in finance, Janine
25 Rubitski.

1 Q Did you have any correspondence with Janine?

2 A No correspondence other than a verbal request
3 for it.

4 Q Did she give you any documents in response to
5 that request?

6 A She sent an e-mail, yes.

7 Q What was contained in that e-mail?

8 A Units sold and revenue for the past three or
9 four years.

10 Q When you say units sold --

11 A Handsets.

12 Q Handsets. Do you recall which models?

13 A It was all models and then a separate
14 category for BlackBerry.

15 Q You said you spoke with someone on the trade
16 show team, is that correct?

17 A It was just a verbal request asking for the
18 trade shows, trade show schedule.

19 Q Who was that?

20 A I believe it was Andy ^{Birkenstock}~~Berkenstock~~. He's one
21 of the people on the trade show team.

22 Q Anyone else?

23 A No. I did speak with the agency to gather
24 spending on advertising per se.

25 Q What agency would that be?

1 A It was MindShare.

2 Q Did they give you any documents?

3 A They did.

4 Q What did those documents contain?

5 A Media spend by year.

6 Q Media spend for what products?

7 A Oh, again it's just Nextel in general. We
8 don't categorize by product.

9 Q Does Nextel use any other advertising
10 agencies other than MindShare?

11 A MindShare is our media agency. We have
12 Chiat/Day which is our creative agency.

13 Q Did you speak with anyone from that agency?

14 A I did not.

15 Q Can you think of anyone else you would have
16 spoke to or reached out to other than the sales and
17 finance people, the trade show team, and the MindShare
18 people?

19 A I may have reached out to the public sector
20 team to understand their attendance at any shows which
21 may not have been captured under trade shows.

22 Q Did you speak with the public sector team
23 about anything other than trade shows?

24 A I did not.

25 Q Who did you speak to at the public sector

1 team?

2 A I believe it was Diana Bibb.

3 Q Is she at the same address?

4 A She is.

5 Q Did she give you any correspondence, any
6 printed materials?

7 A A list of shows that we attend, that she
8 attends.

9 Q Do you recall how far back that list
10 stretched?

11 A I believe it was for the last two years.

12 Q Did you speak with her about anything other
13 than the trade shows?

14 A I did not.

15 Q Did you ask her whether Motorola was at these
16 trade shows?

17 A I did not.

18 Q Did you discuss Motorola with her at all?

19 A I did not.

20 Q When did you have that conversation with Miss
21 Bibb?

22 A Most likely it was in the March time frame as
23 well.

24 Q Is she still with the company to your
25 knowledge?

1 A Yes.

2 MR. WILLIAMS: I'm going to mark another
3 exhibit. This will be Exhibit 3.

4 (Deposition Exhibit 3 was marked for
5 identification and was attached to the transcript.)

6 BY MR. WILLIAMS:

7 Q This is the Notice of Opposition. Have you
8 seen this document before?

9 A I believe I have, yes.

10 Q When did you see this?

11 A Today.

12 Q Did you discuss it with anyone other than the
13 lawyers?

14 A I did not.

15 Q Let me draw your attention to paragraph 1.
16 Could you read that to yourself, and let me know when
17 you're done.

18 A Yes.

19 Q What is meant by dispatch communications
20 services?

21 A It's referred to as a two-way radio.

22 Q Now, what services would Nextel provide in
23 relation to a two-way radio?

24 A Nextel Direct Connect walkie-talkie service.

25 Q What is that?

1 A It's the walkie-talkie that's built into
2 every phone.

3 Q How does Nextel provide those services?

4 A It's built into every phone, and it's our key
5 differentiator.

6 Q What do you mean by key differentiator?

7 A It's what makes Nextel different from other
8 carriers and why most people choose Nextel.

9 Q Where are those products purchased?

10 A Through a variety of channels: direct sales,
11 stores, web, telesales, authorized representatives,
12 dealers.

13 Q How many Nextel products would carry the
14 Direct Connect walkie-talkie service currently?

15 A Every handset that we sell, including the
16 BlackBerry by ^{RIM} ~~REM~~.

17 Q Can you ballpark how many different products
18 that would be?

19 A It varies by year and how many we launch. I
20 believe now we may have 12 or 14 handsets out, but
21 again it fluctuates based on when phones are launched.

22 Q So if a consumer purchases one of these
23 Nextel Direct Connect walkie-talkie products, are they
24 automatically hooked up with the network at the time of
25 purchase?

1 A Well, it's also a cellular phone with a
2 walkie-talkie built in and, yes, the phone comes with
3 it. If they so choose a plan with a walkie-talkie,
4 which most do, most of our plans have the service in
5 there, they use the walkie-talkie service.

6 Q In paragraph 1 referring to Nextel, it says
7 currently has over 12 million subscribers to its
8 services nationwide. Of that 12 million how many would
9 relate to the dispatch communications as opposed to the
10 cellular telephone customers?

11 A Well, there are now 17 million. I really
12 can't say. I would say that almost all of our
13 subscribers use the walkie-talkie service as well as
14 cellular.

15 Q So when you say the walkie-talkie service,
16 would that refer to the dispatch communication service?

17 A Yes, but they also use cellular.

18 Q Can you use dispatch communication services
19 without using cellular services?

20 A You can select a plan that turns off
21 cellular, yes, but most customers don't, but there
22 could be certain businesses that only want their
23 customers or their employees, so to speak, to use
24 dispatch with a two-way radio.

25 Q Can you think of any examples of businesses

1 that have chosen that option?

2 A It could be landscapers whose employers only
3 want them to use the dispatch and not cellular to drive
4 up the phone bills. It could be public sector. I
5 really don't know. I'm not familiar.

6 Q I draw your attention to paragraph 2, if you
7 would please read that to yourself and let me know when
8 you're finished.

9 A Okay.

10 Q Does Motorola manufacture products for use
11 with Nextel's dispatch services?

12 A Yes.

13 Q Which products?

14 A Again, all handsets.

15 Q Do any other manufacturers manufacture these
16 handsets?

17 A No. There's a BlackBerry that has the
18 two-way radio in it as well, and that's manufactured by

19 ~~REM.~~ RIM

20 Q Anyone other than Motorola or ~~REM~~ RIM?

21 A Not for Nextel, no.

22 Q Who purchases these types of products?

23 A Can you clarify? From a customer's
24 standpoint?

25 Q Yes.

1 A Anyone. It could be individuals, businesses,
2 Fortune 500 companies. A variety of companies use
3 Nextel.

4 Q And those same entities would also be the end
5 users?

6 A Sure.

7 Q How long is the longstanding relationship
8 referred to in paragraph 2?

9 A Well, I've been at Nextel since 1997, so it
10 goes back I would say at least nine years ~~prior to me~~,
11 but again I can't answer that with an exact date.

12 Q Please read paragraph 3 to yourself, and let
13 me know when you've finished.

14 A Okay.

15 Q Who are the direct competitors referred to in
16 paragraph 3?

17 A My assumption is they make phones for
18 Verizon. They make some phones for Sprint and most
19 likely other carriers. Those are the two that I know.

20 Q Verizon and Sprint would be considered
21 competitors of Nextel?

22 A Yes.

23 Q Will you please read paragraph 4, and let me
24 know when you've finished.

25 A Okay.

1 Q Do you understand what's meant by the 911
2 tone application?

3 A I understand it's a tone, yes.

4 Q Do you understand it to be a tone claimed by
5 Motorola to be a trademark in its filings with the
6 Patent and Trademark Office?

7 A Yes.

8 Q Do you understand that Nextel has opposed
9 that trademark application?

10 A Yes.

11 Q Now, the goods identified in that application
12 referred to as two-way radios, what do you understand
13 two-way radios to be?

14 A Two-way radios could be a true two-way radio
15 or two-way radios could be a two-way radio that's built
16 into every Nextel handset that we sell.

17 Q What do you mean when you say a true two-way
18 radio?

19 A Two-way radio without cellular.

20 Q Does Nextel offer a true two-way radio?

21 A Not that I'm aware, no.

22 Q Are you aware of any Motorola true two-way
23 radios?

24 A I'm aware Motorola has two-way radios, yes.

25 Q Do all Nextel cellular telephones have the

1 Direct Connect walkie-talkie service feature?

2 A Yes.

3 Q Have you heard the 911 tone that's referred
4 to in that trademark application?

5 A I have not.

6 Q Do you understand what that tone is?

7 A I understand it's a tone, but I've never
8 heard it, so I don't know.

9 Q Have you seen a Motorola two-way radio?

10 A Perhaps when I was down at Plantation, but
11 not really a focus.

12 Q Have you seen one in operation?

13 A Perhaps I have just in general, but not one
14 that was demonstrated per se directly to me.

15 Q So you've never heard the tone --

16 A No.

17 Q -- that emanates from that phone?

18 A No.

19 MR. JACOBS: You're referring to the two-way
20 Motorola radios?

21 MR. WILLIAMS: Correct.

22 MR. JACOBS: Okay.

23 A No.

24 Q Does the Nextel Direct Connect walkie-talkie
25 service emit any tones?

1 A Yes, it does.

2 Q How would you describe those tones?

3 A The Nextel chirp.

4 Q Do you have any other description of the
5 Nextel chirp?

6 A No.

7 Q Do you know technically in terms of frequency
8 what level that chirp is produced?

9 A I believe it's an 1800, but other than that
10 we refer to it as the Nextel chirp. It's what you hear
11 when you initiate a Direct Connect call.

12 Q How do you initiate a Direct Connect call?

13 A You hit the Alert button, a number is
14 programmed in, you press the ~~Alert~~ ^{Button}, and it chirps.

15 Q Does the Nextel product make any other noises
16 other than that 1800 chirp?

17 A It makes sounds if a call doesn't go through.
18 It makes probably sounds when you punch in the buttons.

19 Q Any other sounds you can think of?

20 A Not specifically.

21 Q Going back to the Motorola 911 tone, have you
22 discussed that tone with any customers or potential
23 customers?

24 A Absolutely not.

25 Q Have you discussed that tone with anyone at

1 Motorola -- excuse me -- at Nextel?

2 A No.

3 Q Are you aware of anyone at Nextel discussing
4 Motorola's 911 tone with any customers or potential
5 customers?

6 A No, but I wouldn't be aware of other groups,
7 but no one related to me.

8 Q What other groups could that possibly
9 include?

10 A The only team I could think of was product,
11 but again they are more focused on new products and not
12 old products, but again doubtful.

13 Q Any other groups other than product?

14 A No.

15 Q Who is the head of the product group?

16 ~~Blair~~
A ~~Blair~~ Kutrow.

17 Q Do you know how to spell that last name?

18 A K-u-t-r-o-w.

19 Q Moving down to paragraph number 5, will you
20 please read that to yourself, and let me know when
21 you're finished.

22 A Okay.

23 Q Do you have any reason to doubt that that
24 claimed first use date is accurate?

25 MR. JACOBS: I'm going to object to the

1 extent this question calls for a legal conclusion.

2 A I'm not aware of anything or have we seen
3 anything noting use.

4 Q Are you aware of anyone at Nextel who has
5 looked into that question?

6 A No.

7 Q Moving on to paragraph number 6, will you
8 read that and let me know when you're finished.

9 A Okay.

10 Q Have you had occasion to read that office
11 action?

12 A No.

13 Q Paragraph 7 refers to a response to that
14 office action. Have you had a chance to read that
15 response to the office action?

16 A No.

17 Q Will you please read paragraph 9, and let me
18 know when you're finished.

19 MR. JACOBS: 9 you said?

20 MR. WILLIAMS: Yes.

21 A Okay.

22 Q Paragraph 9 states in part "Applicant has not
23 used the 911 Hz tone in commerce in connection with the
24 goods listed in the 911 Hz tone application." What is
25 the factual basis for that statement?

1 MR. JACOBS: Object to the extent it calls
2 for a legal conclusion, but you can answer.

3 A We've not seen or been made aware of any in
4 commerce, again I'm following the language here, use in
5 any marketing or advertising.

6 Q Has Nextel researched that?

7 A Not per se.

8 Q Has Nextel done any market studies on that
9 topic?

10 A No other than attendance at trade shows or
11 seen anything that would have been brought to the
12 attention of the marketing communications group.

13 Q Has Nextel done any focus groups?

14 A No.

15 Q Any customer interviews?

16 MR. JACOBS: This is with respect to the
17 tone, the 911 hertz tone?

18 MR. WILLIAMS: Correct.

19 A No.

20 Q Any survey work with respect to the 911 tone?

21 A No.

22 Q Have any experts been consulted with respect
23 to the 911 survey tone?

24 MR. JACOBS: Objection to the extent it calls
25 for attorney-client or work product communications, but

1 you can answer.

2 A Not that I'm aware, no.

3 Q Are you aware of any documents that relate to
4 the claim made that applicant has not used the 911 tone
5 in commerce?

6 A No.

7 Q Any correspondence that you're aware of on
8 that topic?

9 A No.

10 Q Any e-mails?

11 A No.

12 Q Who would be the person at Nextel that would
13 have knowledge regarding the trade shows where that 911
14 tone may have been heard?

15 A Depending upon the market, the vertical
16 market, if it was public sector, the public sector
17 team. If it was transportation, the people that are
18 responsible for transportation. It would vary by the
19 show type and the product experts there.

20 Q Will you please read paragraph 10, and let me
21 know when you're finished.

22 A Okay.

23 Q That paragraph states in part "The 911 Hz
24 tone is not inherently distinctive." What's the
25 factual basis for that statement?

1 MR. JACOBS: Objection to the extent it calls
2 for a legal conclusion.

3 A Can you repeat the question?

4 Q What's the factual basis for the statement
5 that the 911 Hz tone is not inherently distinctive?

6 A We don't know the difference.

7 Q We don't know the difference between what and
8 what?

9 A I don't know the difference -- I don't know
10 the sound of that tone.

11 Q What did you mean when you said the
12 difference?

13 A Between a Nextel chirp and this 911 tone.

14 Q Are you aware of any research done by Nextel
15 on that question?

16 A No.

17 Q Are you aware of any market studies to
18 support that claim that the tone is not inherently
19 distinctive?

20 MR. JACOBS: Objection to the extent it calls
21 for a legal conclusion.

22 A No.

23 Q Are you aware of any focus groups that have
24 been conducted on that question?

25 MR. JACOBS: Same objection.

1 A No.

2 Q Are you aware of any customer interviews that
3 have occurred based on that question?

4 MR. JACOBS: Same objection.

5 A No.

6 Q Are you aware of any consumer survey work
7 that's been done on that question?

8 MR. JACOBS: Same objection.

9 A No.

10 Q Has Nextel obtained any expert opinions on
11 that question?

12 MR. JACOBS: Objection to the extent it calls
13 for a legal conclusion and for work product
14 information.

15 A No.

16 Q Further in paragraph 10 it states "The 911 Hz
17 tone is not inherently distinctive and has not acquired
18 distinctiveness." What is the factual basis for the
19 statement that the 911 Hz tone has not acquired
20 distinctiveness?

21 MR. JACOBS: Objection to the extent it calls
22 for a legal conclusion.

23 A Again, I don't know the difference.

24 Q The difference between?

25 MR. JACOBS: Do you understand the question?

1 A No. I'm sorry. Can you clarify please?

2 Q In paragraph 10 it states that the tone,
3 referring to the Motorola tone, has not acquired
4 distinctiveness. I'm asking what the basis for
5 Nextel's belief for that statement would be.

6 MR. JACOBS: Objection to the extent it calls
7 for a legal conclusion.

8 A I guess we don't know it's inherently
9 distinctive.

10 Q The second part to that statement refers to
11 acquired distinctiveness. Do you know if it has
12 acquired distinctiveness?

13 MR. JACOBS: Same objection.

14 A Not that I'm aware.

15 Q Has Nextel done any market studies on that
16 question?

17 MR. JACOBS: Same objection.

18 A Not that I'm aware.

19 Q Has Nextel conducted any focus groups on that
20 question?

21 MR. JACOBS: Same objection.

22 A Not that I'm aware.

23 Q Has Nextel conducted any customer interviews
24 on that question?

25 MR. JACOBS: Same objection.

1 A Not that I'm aware.

2 Q Has any survey work been done on that
3 question?

4 MR. JACOBS: Same objection.

5 A Not that I'm aware.

6 Q Has Nextel consulted with any experts on that
7 question?

8 MR. JACOBS: Same objection and also an
9 objection based on work product.

10 A Not that I'm aware.

11 Q Are you aware of any Nextel documents
12 relating to that question?

13 MR. JACOBS: Objection to the extent it calls
14 for a legal conclusion and may call for privileged
15 documents.

16 A Not that I'm aware.

17 Q Moving on to paragraph 11, will you please
18 read that and let me know when you're done.

19 A Okay.

20 Q Paragraph 11 states that Nextel is a
21 purchaser and potential purchaser of communications
22 devices incorporating two-way radio capabilities from
23 applicant and other vendors. What would those
24 communications devices be?

25 A Handsets and/or BlackBerry.

1 Q But the BlackBerry comes from ~~REM~~^{RIM}, correct?

2 A Correct.

3 Q Who are the other vendors referred to in
4 paragraph 11?

5 A I can only say the other vendor being ~~REM~~^{RIM}.

6 Q And again, that's the BlackBerry model?

7 A Correct.

8 Q Who are Nextel's three largest customers for
9 the communications devices referred to in paragraph 11?

10 A I'm sorry, who are our biggest customers?

11 Q Yes.

12 A That we sell handsets to?

13 Q Yes.

14 A I don't know. I'm not in sales. I don't
15 have that information.

16 Q Who would have that information?

17 A Most likely VP of sales.

18 Q And who is that?

19 A Mark Angelino.

20 Q Paragraph 11 states that Nextel will be
21 "damaged by the unjustified registration of applicant
22 of the 911 Hz tone." Do you see that?

23 A Yes.

24 Q What's the factual basis for the claim that
25 Nextel will be damaged?

1 MR. JACOBS: Objection to the extent it calls
2 for a legal conclusion. Go ahead.

3 A Nextel uses tones to promote its features and
4 services, and if Motorola gets the exclusive rights
5 without showing that they've really used it, then it
6 prevents Nextel from being able to use those tones in
7 the future if they so wish.

8 Q When you said that Motorola hasn't used it,
9 what do you mean by that?

10 A Well, again, we haven't seen usage in
11 advertising or marketing initiatives promoting the
12 tone.

13 Q Has Nextel looked for such usage?

14 A Not per se other than what people in certain
15 departments would have shared with us of any
16 information.

17 Q I believe you said that Nextel uses tones to
18 promote its features and services, is that correct?

19 A Yes.

20 Q Which tones would those be?

21 A The Nextel chirp.

22 Q And that was the 1800 chirp you referred to?

23 A Yes.

24 Q And how does Nextel use those tones to
25 promote its features and services?

1 A With an audible promotional television, brand
2 television, radio. It's actually part of our tag line
3 which is shown without the phone itself because it's a
4 differentiator for us.

5 Q How long has Nextel been doing that?

6 A Since 1997. I'm sorry. 1997, yes.

7 Q The Nextel devices that emit that tone are
8 manufactured by Motorola, is that correct?

9 A Correct.

10 Q And by ^{RIM} ~~REM~~?

11 A Yes.

12 Q The BlackBerry device also makes the 1800
13 tone?

14 A I believe so. It's the same chirp sound.

15 Q Has Nextel conducted any market studies in
16 connection with its chirp tone?

17 A Not on the chirp per se.

18 Q Has Nextel conducted any focus groups or
19 consumer interviews relating to the chirp tone?

20 A No.

21 Q Any survey work that you're aware of?

22 A No, not that I'm aware.

23 Q So Nextel promotes its chirp tone through
24 radio and television advertising?

25 A Brand and promotional television, yes.

1 Q What's the difference between brand and
2 promotional television?

3 A Again, one has an offer, and one is more
4 about the Nextel brand in general.

5 MR. WILLIAMS: Let's take a short break.

6 (Recess)

7 BY MR. WILLIAMS:

8 Q Can I draw your attention back to Exhibit 2
9 please. This is the Notice of Deposition pursuant to
10 Rule 30(b)(6). Will you please read paragraph 1 to
11 yourself, and let me know when you're done.

12 A Yes.

13 Q Which facts does opposer base its contention
14 that Motorola has not used the 911 tone in commerce in
15 connection with its two-way radios?

16 MR. JACOBS: Objection to the extent it calls
17 for a legal conclusion.

18 A We would have been in my role within Nextel
19 and supporting a variety of marketing efforts, had
20 Motorola been advertising and marketing the tone or the
21 mark, we would have been made aware from the various
22 groups, for example, the public sector group.

23 Q If you had to prove today that that tone
24 wasn't used as a mark, what facts would you rely on?

25 MR. JACOBS: Objection to the extent it calls

1 for a legal conclusion.

2 A Other than it hasn't been brought to my
3 attention, I haven't seen it in my almost eight years
4 at Nextel.

5 Q So there's no particular piece of affirmative
6 evidence that you would rely on?

7 MR. JACOBS: Same objection.

8 A Not that I've been made aware.

9 Q Can you please read number 2, and let me know
10 when you're done.

11 A Okay.

12 Q Which facts does Nextel base its contention
13 that Motorola's 911 tone is not inherently distinctive?

14 MR. JACOBS: Same objection.

15 A Can you please clarify?

16 Q Nextel claims that the Motorola 911 tone is
17 not inherently distinctive. What's the factual basis
18 for that claim?

19 MR. JACOBS: Same objection.

20 A Again, I'm not familiar with the 911 tone.

21 Q If you had to prove today that that tone was
22 not inherently distinctive, "you" being Nextel, what
23 would you rely on?

24 MR. JACOBS: Same objection.

25 A I'm sorry. One more time. If I had to --

1 Q If Nextel had to prove that Motorola's 911
2 tone was not inherently distinctive, what evidence
3 would you rely on to support that claim?

4 MR. JACOBS: Same objection.

5 A Again, I don't think I would say listening to
6 the sound and do people know it's distinctive from a
7 marketing perspective and reinforcing it.

8 Q Does Nextel have any evidence as to whether
9 people know it's distinctive?

10 MR. JACOBS: Know what is distinctive?

11 MR. WILLIAMS: The Motorola tone.

12 A I don't believe so.

13 Q Will you please read paragraph number 3, and
14 let me know when you're done.

15 A Okay.

16 Q Which facts does Nextel base its contention
17 that Motorola's 911 tone has not acquired
18 distinctiveness?

19 MR. JACOBS: Objection to the extent it calls
20 for a legal conclusion.

21 A Again, it's the usage of promoting it so that
22 people come to learn and understand that tone is
23 connected.

24 Q And has Nextel studied whether people have
25 come to learn that that tone is connected to Motorola?

1 A Not that I'm aware.

2 Q Moving on to number 4, will you read that and
3 let me know when you're finished.

4 A Yes.

5 Q On which facts does Nextel base its
6 contention that it will be damaged if Motorola's 911
7 tone is registered?

8 A Again, Nextel uses tones to promote its
9 features and services, and if Motorola were to get
10 exclusive rights to this sound, it would prohibit us to
11 use this sound in the future should we so wish.

12 Q Does Nextel believe those tones are similar,
13 the Motorola tone and the Nextel chirp?

14 MR. JACOBS: Objection to the extent it calls
15 for a legal conclusion.

16 A I believe it's the sound in general without
17 showing usage.

18 Q Well, you're not saying that all sounds sound
19 similar, are you?

20 A No.

21 Q What is it about this Motorola sound that
22 troubles you, "you" being Nextel?

23 A I think it's just a sound in general. If
24 exclusive rights were given to this sound, it would
25 prohibit us perhaps from using it in the future.

1 Q When you say using it in the future, what are
2 you referring to?

3 A Well, for example, we use a sound today. We
4 use a few sounds, mostly the Nextel chirp.

5 Q What other sounds are you referring to other
6 than the chirp?

7 A There could be a sound in GPS, but the sound
8 we use most is the Nextel chirp.

9 Q Are there other sounds on the drawing board
10 to your knowledge?

11 A No.

12 Q Moving on to paragraph 5, will you read that
13 and let me know when you're finished.

14 A Okay.

15 Q Who do you understand to be the purchasers of
16 Motorola's products that emit the 911 tone?

17 A I believe it would be the public sector,
18 police, fire departments.

19 Q How do you know that?

20 A Because you see those people using them.

21 Q Did you talk to anyone about that?

22 A No.

23 Q Are there any Nextel documents that you're
24 aware of relating to Motorola purchasers for the
25 two-way radio products?

1 A Not that I'm aware.

2 Q Moving on to paragraph 6, will you read that
3 paragraph to yourself, and let me know when you're
4 finished.

5 A Okay.

6 Q Are you aware of any opinion of counsel
7 relating to Motorola's 911 tone?

8 MR. JACOBS: I'll instruct you not to divulge
9 any privileged communications.

10 A I'm sorry. I'm not clear of the question.

11 Q Without telling me what it says if it exists,
12 are you aware of any opinions or memorandums written by
13 the lawyers relating to Motorola's 911 tone?

14 A No.

15 Q Are you aware of any opinion from any other
16 expert relating to Motorola's 911 tone?

17 A No.

18 Q Are you aware of any opinion or any comments
19 from anyone relating to Motorola's 911 tone?

20 A No.

21 Q Will you please read number 7, and let me
22 know when you're done.

23 A Okay.

24 Q If I understand your previous testimony, you
25 said that Nextel doesn't make two-way radios, correct?

1 A Correct.

2 Q But the Nextel handsets have that Direct
3 Connect feature?

4 A Yes. We purchase phones from Motorola that
5 include a two-way radio.

6 Q Would you call those products a two-way
7 radio?

8 A No.

9 Q Would you call it a handset?

10 A We call it a handset or a phone that happens
11 to have other capabilities.

12 Q Does Nextel market their handsets to the
13 public sector?

14 A Yes.

15 Q How does it do that?

16 A Again, I'm not in sales, but trade shows. We
17 run ads in magazines, but again I'm not in sales.

18 Q Do you know any particular magazines?

19 A I don't.

20 Q Any particular trade shows?

21 A I don't per se, no.

22 Q Does Nextel have in-house representatives who
23 would speak with public sector customers?

24 A Salespeople.

25 Q And would they go directly to a public sector

1 purchaser and do a presentation?

2 A Most likely, yes.

3 Q What department are those salespeople in?

4 A They're under most likely the government
5 sales.

6 Q Who's the head of that department?

7 A Leon Frasier. He's the VP.

8 Q Is he at the same address as you, business
9 address?

10 A He might be at 2001 Edmund Halley or he might
11 be at the McLean office, I don't know, but he's in the
12 Washington, D.C. area.

13 Q Okay. Moving on to paragraph 8, will you
14 please read that and let me know when you're finished.

15 A Okay.

16 Q When did Nextel first become aware of
17 Motorola's 911 tone?

18 MR. JACOBS: Mr. Williams, we'll stipulate
19 here that Nextel first learned of the application
20 number that's referred to in topic number 8 from
21 counsel in March of 2004, and I'll ask Miss O'Reilly
22 not to divulge any communications with counsel
23 regarding those issues.

24 BY MR. WILLIAMS:

25 Q Other than the communications with counsel,

1 when did Nextel first become aware of the tone itself,
2 the Motorola 911 tone?

3 A I didn't become aware until speaking with
4 counsel.

5 Q Apart from yourself as an individual, do you
6 know when Nextel as a company became aware of that
7 tone?

8 A I do not.

9 Q Moving on to paragraph 9, will you read that
10 and let me know when you're finished.

11 A Okay.

12 Q Do you think that it's likely that consumers
13 would be confused as to the source of a two-way radio
14 or cellular product based on the chirp sound that it
15 emits?

16 MR. JACOBS: Objection to the extent it calls
17 for a legal conclusion and also objection to the use of
18 the word chirp. Are you referring to the 911 hertz
19 tone?

20 MR. WILLIAMS: Any tone.

21 A I'm not aware.

22 Q Do you think it's likely that that would
23 occur?

24 MR. JACOBS: Same objection.

25 A Again, I don't know what the 911 sounds like,

1 so I don't know.

2 Q Is it likely that a consumer would hear a
3 particular tone emanating from a phone or a two-way
4 radio product and associate the phone with a particular
5 source?

6 MR. JACOBS: Same objection.

7 A It's possible, but I don't know.

8 Q What makes you say that it's possible?

9 MR. JACOBS: Same objection.

10 A Again, I have not heard the tone, so I don't
11 know.

12 Q You've heard the Nextel chirp, correct?

13 A Yes.

14 Q Is it likely that consumers would hear that
15 chirp and associate that tone with a particular
16 manufacturer or service provider?

17 A Are we referring to a two-way radio or
18 referring to a phone?

19 Q Either one.

20 A If it's used in advertising and marketing and
21 people come to understand its association, it's
22 possible. Similar to the chirp within the phones that
23 Nextel sells and how it is referred to as the Nextel
24 chirp.

25 Q When people hear the Nextel chirp, do they

1 associate that tone with Nextel?

2 A Yes.

3 Q And how do you know that?

4 A Focus groups, people talking.

5 Q Have such focus groups been conducted?

6 A Not per se on that, but focus groups where
7 Nextel customers are there, that is how they refer to
8 them.

9 Q Who would have knowledge about those focus
10 groups and what's gone on?

11 A Dennis Newton.

12 Q And who is Dennis Newton?

13 A He is in charge of research.

14 Q You also mentioned people talking as a source
15 of that information. What were you referring to when
16 you said people talking?

17 A Just when you meet other people who have
18 Nextel, their familiarity with the product. It is
19 referred to as the Nextel chirp just in casual
20 conversation in how people refer to their phone.

21 Q Are you aware of any competitor's products
22 that make a similar chirp noise?

23 MR. JACOBS: Objection to the extent it calls
24 for a legal conclusion.

25 A Verizon has come out with a handset, but I

1 have not heard their two-way radio sound.

2 Q How about their handset, Verizon's handset,
3 does that make a chirp?

4 A It makes a sound because it has a
5 walkie-talkie, but I'm not familiar with that sound.

6 Q Are your competitive intelligence people
7 looking at that?

8 A I'm sure they are.

9 Q But you haven't heard that sound?

10 A I have not.

11 Q Anyone other than Verizon?

12 A Sprint has a product, and it may make a
13 sound. I don't know. It has a walkie-talkie feature
14 in it, but I don't know that sound either.

15 Q Are you aware of any consumer who's been
16 confused as to the source of a product because of the
17 sound that it makes?

18 MR. JACOBS: Objection to the extent it calls
19 for a legal conclusion.

20 A Not that I'm aware of.

21 Q What's Nextel's annual advertising budget?

22 A In the hundreds of millions, \$150 million
23 perhaps.

24 Q Do you know how that's allocated out
25 approximately?

1 A What do you mean by allocation?

2 Q A certain amount to trade shows, a certain
3 amount to radio, a certain amount to television, for
4 example.

5 A It varies by year. Trade shows are separate.
6 Media is one group.

7 Q But that would all include the \$150 million?

8 A Yes. Again, I'd have to get accurate
9 numbers.

10 Q Of that \$150 million, what percentage of that
11 would be allocated to advertising where the Nextel
12 chirp would be audible?

13 A Again, I'd have to go back and get accurate
14 information, but that would include promo television,
15 brand, and radio which is audible.

16 Q In the Nextel advertising where the 1800
17 chirp tone is audible, are there any other tones that
18 are audible?

19 MR. JACOBS: Are you referring to a specific
20 commercial?

21 MR. WILLIAMS: Any form of advertising that
22 Nextel uses.

23 A Most of it is focused on the Nextel chirp.
24 Other products and features might be advertised, but
25 they perhaps don't come with a sound.

1 Q I think you said that the handsets may make a
2 tone when buttons are pressed, for example.

3 A Yes.

4 Q Is there any Nextel advertising where those
5 tones are heard?

6 A Not that I can recall because we don't show a
7 cellular call being made. We focus on our
8 differentiators which would be the walkie-talkie.

9 Q Do any of your competitors offer a
10 walkie-talkie?

11 A Yes.

12 Q Who?

13 A Verizon has a walkie-talkie, and Sprint has I
14 believe one handset with a walkie-talkie.

15 Q Do you know how many different Nextel
16 advertisements have played the Nextel chirp?

17 MR. JACOBS: Mr. Williams, I think we're
18 starting to get off topic here from the 30(b)(6)
19 notice. I'll let Miss O'Reilly answer a couple more
20 questions here, but I think we should probably get back
21 on topic.

22 A I'd have to gather the information. It would
23 go all the way back to 1997.

24 Q Would you look at paragraph 20, and let me
25 know when you've read that.

1 A Okay.

2 Q Does Nextel have a document retention policy?

3 A Not that I'm aware.

4 Q Are there any instructions as to how long you
5 can keep your e-mail?

6 A Not that I'm aware.

7 Q Are you aware of your In boxes being purged
8 at periodic intervals?

9 A Not that I'm aware.

10 Q Is Nextel aware of any other companies other
11 than Motorola who use a 911 hertz tone?

12 A Again, not that I'm aware.

13 MR. WILLIAMS: Let's move on to another
14 exhibit.

15 (Deposition Exhibit 4 was marked for
16 identification and was attached to the transcript.)

17 BY MR. WILLIAMS:

18 Q We've marked as Exhibit 4 Opposer's Response
19 to Applicant's First Set of Requests for Production of
20 Documents and Things. I'll give you a minute to peruse
21 this, and I'm going to ask you if you've seen this
22 before?

23 A Okay.

24 Q Have you seen this document before?

25 A I don't believe so.

1 Q Did anyone ask you to look for documents in
2 connection with this case?

3 A No.

4 MR. WILLIAMS: I'm going to mark the next
5 exhibit.

6 (Deposition Exhibit 5 was marked for
7 identification and was attached to the transcript.)

8 BY MR. WILLIAMS:

9 Q I've just marked as Exhibit 5 what was
10 produced to us by Nextel's lawyers in response to our
11 request for documents. Have you seen these papers
12 before?

13 A No.

14 Q Are you aware of any other documents Nextel
15 intends to produce in response to Motorola's request
16 for documents?

17 A Not that I'm aware.

18 Q Are you aware of any other documents that
19 Nextel intends to rely upon in these proceedings?

20 A Not that I'm aware.

21 MR. WILLIAMS: I'm going to mark another
22 exhibit.

23 (Deposition Exhibit 6 was marked for
24 identification and was attached to the transcript.)

25 BY MR. WILLIAMS:

1 Q I've just marked as Exhibit 6 Opposer's
2 Response to Applicant's First Set of Interrogatories.
3 Can you take a moment to review that please.

4 A Okay.

5 Q Have you seen that document before?

6 A I have seen it but not studied it.

7 Q When did you see that?

8 A When I met with counsel.

9 Q How long ago was that?

10 A April/May time frame.

11 Q April/May of 2005?

12 A Yes.

13 Q Did you assist in preparing Nextel's
14 responses that are set forth in this document?

15 A No.

16 MR. WILLIAMS: Let's take a short break, and
17 I think I can wrap this up fairly soon.

18 (Recess)

19 A Before we start, if I may, I think I may have
20 misspoken on something, and I just wanted to clarify.

21 Q What would that be?

22 A Exhibit 4. You had asked me if I had been
23 asked to look for any documents. I did, but nothing
24 was found. So I just wanted to clarify that.

25 Q Exhibit 4 is Opposer's Response to

1 Applicant's First Set of Requests for Production of
2 Documents and Things?

3 A Yes.

4 Q When were you asked?

5 A Most likely the first time we met which was
6 March or April of 2005.

7 Q And you were asked by counsel?

8 A Yes, but I did not find any information.

9 Q Did you look for information?

10 A I did.

11 Q Where did you look?

12 A E-mails and just asking a few individuals,
13 but nothing was found, and my conversations were very
14 broad, nothing about what I was looking for other than
15 just questions that were asked face-to-face with
16 people.

17 Q Who were those people?

18 A Again, the trade show team, the competitive
19 intelligence group. That was I believe it.

20 Q And you said you didn't locate any documents?

21 A Correct.

22 Q Did those people locate any documents, the
23 trade show team or the competitive intelligence group?

24 A No. There were no documents found.

25 Q Did you do anything else?

1 A No.

2 Q Which e-mails did you review?

3 A E-mails?

4 Q I thought you said you looked through
5 e-mails.

6 A Oh, I just looked in my e-mail box, but I did
7 not have anything related to it because I wasn't aware
8 of this.

9 Q "This" being?

10 A The 911, until it was brought to our
11 attention.

12 Q Will you please look at Exhibit 6, paragraph
13 number 10.

14 A On page 6?

15 Q At the top of page 7 actually.

16 A Exhibit 6?

17 Q Yes.

18 A Right here? Okay.

19 Q Do you see where it says "opposer and
20 applicant are business partners"?

21 A Yes.

22 Q What's meant by that?

23 A We purchase our phones from Motorola.

24 Q Do you have any factual reason to believe
25 that Motorola would assert its trademark rights in the

1 911 tone against Nextel?

2 A Sorry. I need clarification.

3 Q Well, you stated that Nextel and Motorola are
4 business partners. As business partners --

5 MR. JACOBS: The interrogatory response said
6 that. She didn't state it.

7 BY MR. WILLIAMS:

8 Q As business partners do you have any factual
9 reason to believe that Motorola would assert its 911
10 tone against Nextel?

11 A I'm not involved. I really don't have an
12 answer here.

13 Q But you're not aware of any reason?

14 A I'm sorry. One more time.

15 Q You're not aware of any reason why Motorola
16 would assert its trademark rights against Nextel in
17 connection with this 911 tone?

18 A I'm not aware.

19 MR. WILLIAMS: I'm going to mark another
20 exhibit.

21 (Deposition Exhibit 7 was marked for
22 identification and was attached to the transcript.)

23 BY MR. WILLIAMS:

24 Q I've just marked as Exhibit Number 7 a
25 printout from the Patent and Trademark Office

1 electronic database covering the Nextel CHRRRP word
2 mark. This is serial number 78/547,268. Were you
3 aware that Nextel filed an application for this word
4 mark?

5 A No, I was not.

6 MR. JACOBS: Just to make it clear, the mark
7 that Mr. Williams or the document that Mr. Williams
8 handed you, the mark is listed as CHRRRP.

9 A I'm not aware.

10 Q You're not aware of this application?

11 A No.

12 Q Do you know whether this mark CHRRRP has been
13 used by Nextel?

14 A Not that I'm aware in advertising, no.

15 Q Are you aware of any plans to use that mark
16 in advertising?

17 A I can't say for the future, but at this time
18 I'm not aware.

19 MR. WILLIAMS: I have nothing further.

20 MR. JACOBS: Okay. Before we go off the
21 record, I just want to confirm that this will be
22 designated as Confidential - Attorneys' Eyes Only as
23 stated in the protective order.

24 (Signature having not been waived, the deposition
25 of Allison O'Reilly was concluded at 11:15 a.m.)

ACKNOWLEDGMENT OF DEPONENT

I, Allison O'Reilly, do hereby acknowledge
that I have read and examined the foregoing testimony,
and the same is a true, correct and complete
transcription of the testimony given by me and any
corrections appear on the attached Errata Sheet signed
by me.

(DATE)

(SIGNATURE)

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2
3 I, Nancy Bond Rowland, Registered
4 Professional Reporter, the officer before whom the
5 foregoing proceedings were taken, do hereby certify
6 that the foregoing transcript is a true and correct
7 record of the proceedings; that said proceedings were
8 taken by me stenographically and thereafter reduced to
9 typewriting under my supervision; and that I am nether
10 counsel for, related to, nor employed by any of the
11 parties to this case and have no interest, financial or
12 otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set my
14 hand and affixed my notarial seal this 31st day of July
15 2005.

16
17
18
19 My commission expires:
20 October 31, 2009
21
22

23 _____
24 NOTARY PUBLIC IN AND FOR THE
25 DISTRICT OF COLUMBIA

E R R A T A S H E E T

IN RE: Nextel v. Motorola

RETURN BY:

PAGE	LINE	CORRECTION AND REASON
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E R R A T A S H E E T C O N T I N U E D

IN RE: Nextel v. Motorola

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PAGE	LINE	CORRECTION AND REASON
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1. **Identify the main components of the system.** The system consists of a **client** and a **server**. The client is responsible for sending requests to the server, and the server is responsible for processing these requests and returning responses.

1. **Identifikasi Masalah**
 2. **Pengumpulan Data**
 3. **Penyusunan Laporan**
 4. **Pengujian**
 5. **Penyempurnaan**
 6. **Pengujian Akhir**
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1. **Identify the main components of the system.** The system consists of a **client** and a **server**. The client is responsible for sending requests to the server, and the server is responsible for processing these requests and returning responses.

1. **Identify the main topic or purpose of the text.** (1 point)
 2. **Summarize the key points or findings.** (2 points)
 3. **Discuss the implications or significance of the results.** (3 points)
 4. **Provide a conclusion or recommendation.** (2 points)

1. **Identify the main purpose of the text.** The main purpose of the text is to inform the reader about the importance of maintaining accurate records in a business context.

1. **Identify the main components of the system.** The system consists of a **client** and a **server**. The client is responsible for sending requests to the server, and the server is responsible for processing these requests and returning responses.

2. **Describe the flow of data.** Data flows from the client to the server via a network connection. The client sends a request, and the server processes it and returns a response.

3. **Identify the protocols used.** The system uses a **REST API** for communication between the client and the server.

4. **Describe the data format.** The data is exchanged in **JSON** format.

5. **Identify the security measures.** The system uses **HTTPS** for secure communication between the client and the server.

6. **Describe the error handling.** The system uses **HTTP status codes** to indicate the result of a request. For example, a 200 status code indicates a successful response, while a 404 status code indicates a not found response.

7. **Identify the logging and monitoring.** The system uses **log files** to record events and errors. It also uses **monitoring tools** to track the system's performance and availability.

8. **Describe the deployment and scaling.** The system is deployed on a **cloud platform**, which allows for easy scaling and management.

9. **Identify the testing and validation.** The system is tested using **unit tests** and **integration tests** to ensure its correctness and reliability.

10. **Describe the documentation.** The system is documented using **API documentation** to provide information about the available endpoints and their usage.

(DATE)

(SIGNATURE)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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NEXTEL COMMUNICATIONS, INC., :
Opposer :
v. : App. No. 78/235,618
MOTOROLA, INC., :
Applicant :

-----X
I, Allison O'Reilly, being first duly sworn, on oath say that I am the deponent in the
aforesaid deposition taken July 26, 2005, that I have read the foregoing transcript of the
deposition, consisting of pages 1 to 65 inclusive, and affix my signature to same.

Allison O'Reilly
Allison O'Reilly

Subscribed and sworn to
Before me this 9 day of
September, 2005

Vaneda A. Dougherty
Notary Public

VANEDA A. DOUGHERTY
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES SEPTEMBER 30, 2008



ERRATA

Deposition of: Allison O'Reilly

I wish to make the following changes for the following reasons:

Page

Line

11

2

Change: eight - seven

Reason: Correction

11

18

Change: Detwiler - Detweiler

Reason: Spelling Error

12

24

Change: Detwiler - Detweiler

Reason: Spelling Error

19

20

Change: Berkenstock - Birkenstock

Reason: Spelling Error

23

16

Change: REM - RIM

Reason: Spelling Error

25

19

Change: REM - RIM

Reason: Spelling Error

25

20

Change: REM - RIM

Reason: Spelling Error

26

10

Change: Delete "prior to me"

Reason: Clarification

28

14

Change: Alert - Button

Reason: Clarification

Page

Line

✓ 30

16

Change: Blaire - Blair

Reason: Spelling Error

✓ 38

1

Change: REM - RIM

Reason: Spelling Error

✓ 38

5

Change: REM - RIM

Reason: Spelling Error

✓ 40

6

Change: REM - RIM

Reason: Spelling Error

Signed:

*this change
is on line
10 and #
line 6.*
A. J. O'Reilly

Dated:

9/9/05